

## **APPENDIX B**

### **CONSULTATION LETTERS**

This appendix displays copies of the correspondence between the preparers of this Environmental Impact Statement (EIS) and the agencies requiring formal consultation as part of the environmental review process. Each set of letters is described below.

#### **B.1 Consultation in Accordance with the Federal Endangered Species Act of 1973**

The Endangered Species Act of 1973, as amended (16 USC 1531 *et seq.*), provides for the conservation of threatened and endangered species and the ecosystems on which those species rely. Under the requirements of Section 7 of the Act, a Federal agency must consult with the U.S. Fish and Wildlife Service (FWS) (part of the Department of the Interior) and the National Marine Fisheries Service (NMFS) (part of the Department of Commerce) if a proposed action could affect threatened or endangered species or their habitat. The outcome of this consultation would be a biological opinion issued by FWS or NMFS that would state whether or not the proposed action would jeopardize the continued existence of the subject species or would result in the destruction or adverse modification of any critical habitat for such species.

The letters displayed in this appendix document the consultation process with the FWS and the FWS's reply. Consultation with the NMFS is not applicable to this proposed action because of the distance between the proposed project and any potentially affected marine environment.

#### **B.2 Consultation in Accordance with the National Historic Preservation Act of 1966**

Section 106 of the National Historic Preservation Act (NHPA), as amended (16 USC 470 *et seq.*) requires Federal agencies to take into account the effects of their proposed actions on properties listed on or eligible for listing on the *National Register of Historic Places (National Register)*. Prior to approval of an action, Federal agencies must give the Advisory Council on Historic Preservation (the Council) a reasonable opportunity to comment on the proposed action. In addition, Section 110(f) of the Act requires specific planning and action be taken to minimize harm to any national historic landmarks that may be directly and adversely affected by a Federal agency's actions.

The first step in compliance with Section 106 of the NHPA is to identify and evaluate historic properties in the vicinity of the proposed action. The usual process is for the Federal agency, with the assistance of the State Historic Preservation Officer (SHPO) in the state in which the proposed action will occur, to locate and evaluate all known historic properties or such properties potentially eligible for listing on the *National Register*. If there are no such properties, the agency must provide documentation of that fact to the SHPO. If historic properties are present, the agency must determine whether the proposed action could affect the properties in any way. If required after this evaluation,

the agency would consult with the Council and the SHPO regarding potentially adverse effects. Such consultations generally result in the development of a Memorandum of Agreement that includes specifications and procedures to be followed to minimize or mitigate potential adverse impact to a historic resource.

The Cooperating Federal Agencies contacted regional Federally Recognized Indian Tribes and other organizations soliciting their interest in being consulting parties in the Section 106 process. These letters are displayed in this appendix along with the responses received to these letters soliciting interest in participating in the Section 106 process.

The letters shown in this appendix document the consultation process as follows:

Exhibits	Letters displayed
B.1-1 through B.1-4	NRC and FWS correspondence
B.2-1 through B.2-9	NRC and SHPO correspondence
B.3-1 through B.3-4	NRC and Council correspondence
B.4-1 through B.4-8	Solicitations of interest in being consulting parties and NRC and Ohngo Gaudadeh Devia correspondence
B 5-1 through B.5-32	Concurrence letters (e.g., requests for concurrence on eligibility determinations for the archaeological and historic sties identified within the area of potential effect for the proposed facility) and associated correspondence (e.g., notifications of extensions of review period).

Correspondence dealing with the Section 106 process contains some sensitive information that is being withheld from disclosure. This correspondence is not included in this appendix.

Some of the correspondence reproduced in this appendix had multiple recipients. Those recipients are listed below rather than presenting the letters as duplicates in this appendix. In addition, some correspondence contained duplicates of attachments to related correspondence by the same organization or individual. Those submissions appear only once in this appendix. Lastly, service lists for project-related correspondence are maintained in the NRC Spent Fuel Program Office.

**Letter dated July 1, 1999 (Exhibit B.4-1)**

Mr. Leon Bear, Chairman  
Skull Valley Band of Goshute Indians  
Salt Lake City, Utah

Mr. Vince Garcia, Chair  
South Fork Band Council  
Te-Moak Tribe of Western Shoshone  
Elko, Nevada

Mr. David Gonzales, Chair  
Elko Band Council  
Te-Moak Tribe of Western Shoshone  
Elko, Nevada

Mr. David Pete, Chair  
Goshute Indian Tribe  
Ibapah, Utah

Ms. Andrea Woods, Chair  
Wells Band Council  
Te-Moak Tribe of Western Shoshone  
Wells, Nevada

Mr. Ronald Wopsock, Chair  
The Ute Indian Tribe  
Ft. Duchesne, Utah

**Letter dated Dec. 28, 1999, and January 5, 1999 (Exhibit B.4-2)**

Mr. Jay Banta, President Elect  
The Lincoln Highway Association  
Utah Chapter  
Dugway, Utah

The Honorable Leon D. Bear, Chairman  
Skull Valley Band of Goshute Indians  
Salt Lake City, Utah

The Honorable Guen Davis, Chairperson  
Northwestern Band of Shoshone Nation  
Blackfoot, Idaho

Dugway Proving Ground

Mr. Vern Gorzitze  
Utah Crossroads Chapter  
The Oregon California Trail Association  
Salt Lake City, Utah

Mr. Patrick Hearty, Past Chairman  
Utah Historic Trails Consortium  
South Jordan, Utah

The Honorable Milton Hooper, Chairman  
Goshute Indian Tribe  
Ibapah, Utah

Mr. George Ivory, Chairman  
Utah Historic Trails Consortium  
Midvale, Utah

Mr. Jere Krakow, Superintendent  
National Park Service Long Distance Trails Office  
Salt Lake City, Utah

Paiute Indian Tribe of Utah  
Cedar City, Utah

Mr. Jesse G. Petersen, President  
The Lincoln Highway Association  
Tooele, Utah

Mr. Richard Poulsen  
The Iosepa Historical Association  
West Valley Utah Branch 01  
West Valley, Utah

Mr. Lester Tippie, President  
National Railway Historical Society  
Promontory chapter  
Salt Lake City, Utah

Mr. Ronald Wopsock, Chair  
The Ute Indian Tribe  
Ft. Duchesne, Utah

**Letter dated Apr. 26, 2000 (Exhibit B.4-6)**

The Honorable Geneal Anderson, Chairperson  
Paiute Indian Tribe of Utah  
Tribal /Council  
Cedar City, Utah

Mr. Jay Banta, President Elect  
The Lincoln Highway Association  
Utah Chapter  
Dugway, Utah

The Honorable Leon D. Bear, Chairman  
Skull Valley Band of Goshute Indians  
Salt Lake City, Utah

Ms. Kathleen Callister, Archeologist  
US Army Dugway Proving Ground  
Dugway, Utah

The Honorable Guen Davis, Chairperson  
Northwestern Band of Shoshone Nation  
Blackfoot, Idaho

The Honorable Vince Garcia, Chairman  
South Fork Band Council  
Te-Moak Tribe of Western Shoshone  
Elko, Nevada

The Honorable David Gonzales, Chairman  
Elko Band Council  
Te-Moak Tribe of Western Shoshone  
Elko, Nevada

The Honorable Milton Hooper, Chairman  
Goshute Indian Tribe  
Ibapah, Utah

Mr. George Ivory, Chairman  
Utah Historic Trails Consortium  
Midvale, Utah

Mr. Jere Krakow, Superintendent  
National Park Service Long Distance Trails Office  
Salt Lake City, Utah

Mr. Jesse G. Petersen  
The Lincoln Highway Association  
Tooele, Utah

Mr. Richard Poulsen  
The Iosepa Historical Association  
West Valley, Utah

The Honorable Andrea Woods, Chairperson  
Wells Band Council  
Te-Moak Tribe of Western Shoshone  
Wells, Nevada

**Letter dated Oct.16, 2000 (Exhibit B.5-4)**

Steve Berlin, President  
The Oregon California Trail Association  
Utah Crossroads Chapter  
Salt Lake City, Utah

George Ivory, Chairman  
Utah Historic Trails Consortium  
Midvale, Utah

Jesse G. Petersen, President  
The Lincoln Highway Association  
Tooele, Utah

**Letter dated Oct. 16, 2000 (Exhibit B.5-7)**

The Honorable Geneal Anderson, Chairperson  
Paiute Indian Tribe  
Cedar City, Utah

**Letter dated Dec. 1, 2000 (Exhibit B.5-13)**

The Honorable Geneal Anderson, Chairperson  
Paiute Indian Tribe of Utah  
Tribal Council  
Cedar City, Utah

Mr. Jay Banta, President  
The Lincoln Highway Association  
Utah Chapter  
Dugway, Utah

Steve Berlin, President  
The Oregon California Trail Association  
Utah Crossroads Chapter  
Salt Lake City, Utah

Ms. Margene Bullcreek [Letter dated Dec. 2, 2000]  
Ohngo Gaudadeh Devia  
Tooele, Utah

Ms. Natalie Gochnour  
Utah State Planning Coordinator  
Salt Lake City, Utah

The Honorable Milton Hooper, Chairman  
Confederated Tribes of the Goshute Reservation  
Ibapah, Utah

Mr. George Ivory, Chairman  
Utah Historic Trails Consortium  
Midvale, Utah

Mr. Jere Krakow, Superintendent  
National Park Service Long Distance Trails Office  
Salt Lake City, Utah

The Honorable Elwood Mose, Chairperson  
Tribal Council of the Te-Moak Tribe  
of Western Shoshone Indians of Nevada  
Elko, Nevada

Mr. John D. Parkyn  
Chairman of the Board  
Private Fuel Storage, L.L.C.  
La Crosse, Wisconsin

Mr. Jesse G. Petersen, President  
The Lincoln Highway Association  
Tooele, Utah

Mr. A. Stanfill  
Advisory Council on Historic Preservation  
Lakewood, Colorado

**Letter dated Feb. 8, 2001 (Exhibit B.5-22)**

The Honorable Geneal Anderson, Chairperson  
Paiute Indian Tribe of Utah  
Tribal Council  
Cedar City, Utah

Mr. Jay Banta, President  
The Lincoln Highway Association  
Utah Chapter  
Dugway, Utah

Steve Berlin, President  
The Oregon California Trail Association  
Utah Crossroads Chapter  
Salt Lake City, Utah

Ms. Margene Bullcreek  
Ohngo Gaudadeh Devia  
Tooele, Utah

Ms. Carol Gleichman  
Advisory Council on Historic Preservation  
Lakewood, Colorado

Ms. Natalie Gochnour  
Utah State Planning Coordinator  
Salt Lake City, Utah

The Honorable Milton Hooper, Chairman  
Confederated Tribes of the Goshute Reservation  
Ibapah, Utah

Mr. George Ivory, Chairman  
Utah Historic Trails Consortium  
Midvale, Utah

Mr. Jere Krakow, Superintendent  
National Park Service Long Distance Trails Office  
Salt Lake City, Utah

The Honorable Elwood Mose, Chairperson  
Tribal Council of the Te-Moak Tribe  
of Western Shoshone Indians of Nevada  
Elko, Nevada

Mr. John D. Parkyn  
Chairman of the Board  
Private Fuel Storage, L.L.C.  
La Crosse, Wisconsin

**Letter dated June 19, 2001 (Exhibit B.5-27)**

The Honorable Geneal Anderson, Chairperson  
Paiute Indian Tribe of Utah  
Tribal Council  
Cedar City, Utah

Mr. Jay Banta, President  
The Lincoln Highway Association  
Utah Chapter  
Dugway, Utah

The Honorable Leon D. Bear, Chairman  
Skull Valley Band of Goshute Indians  
Salt Lake City, Utah

Steve Berlin, President  
The Oregon California Trail Association  
Utah Crossroads Chapter  
Salt Lake City, Utah

Ms. Margene Bullcreek  
Ohngo Gaudadeh Devia  
Tooele, Utah

Ms. Carol Gleichman  
Advisory Council on Historic Preservation  
Lakewood, Colorado

Ms. Natalie Gochnour  
Utah State Planning Coordinator  
Salt Lake City, Utah

Mr. George Ivory, Chairman  
Utah Historic Trails Consortium  
Midvale, Utah

Mr. Jere Krakow, Superintendent  
National Park Service Long Distance Trails Office  
Salt Lake City, Utah

The Honorable Elwood Mose, Chairperson  
Tribal Council of the Te-Moak Tribe  
of Western Shoshone Indians of Nevada  
Elko, Nevada

Mr. John D. Parkyn  
Chairman of the Board  
Private Fuel Storage, L.L.C.  
La Crosse, Wisconsin

Mr. Jesse G. Petersen, President  
The Lincoln Highway Association  
Tooele, Utah



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

June 14, 1999

Mr. Reed Harris, Field Supervisor  
U.S. Department of Interior  
Fish and Wildlife Service  
Utah Field Office  
Lincoln Plaza, Suite 404  
145 East 1300 South  
Salt Lake City, Utah 84115

SUBJECT: REQUEST FOR INFORMATION REGARDING ENDANGERED SPECIES  
AND CRITICAL HABITATS FOR THE PROPOSED PRIVATE FUEL  
STORAGE FACILITY

Dear Mr. Harris:

Private Fuel Storage, Limited Liability Corporation (PFS) submitted a license application, dated June 20, 1997, to the Nuclear Regulatory Commission (NRC) to receive, transfer, and possess spent nuclear fuel in an independent spent fuel storage facility (ISFSI) on the reservation of the Skull Valley Band of Goshute Indians. The PFS facility is designed for dry storage of up to 40,000 metric tons of uranium of spent fuel from U.S. commercial power reactors in approximately 4,000 sealed metal storage casks. The storage system would be passive, relying on natural convection for cooling. In addition to seeking a license from NRC, PFS is seeking rights-of-way from the U.S. Bureau of Land Management (BLM) for an Intermodal Transfer Point and a rail line to transport spent nuclear fuel to and from the ISFSI. The proposed rail line would traverse land that is included within the BLM Pony Express Resource Management Plan (RMP) which does not currently allow for major rights-of-way such as a rail line in this area. An amendment to the RMP would be required prior to granting the requested right-of-way. Also, the U.S. Bureau of Indian Affairs (BIA) must approve a proposed lease agreement between the Skull Valley Band of Goshute Indians and PFS.

Because the required actions of the three federal agencies are related, we have agreed to cooperate in the preparation of an environmental impact statement for these actions. Similarly, the agencies have also agreed to participate jointly in the consultation process required by Section 7 of the Endangered Species Act of 1973, (ESA) and other required consultations. We are requesting a list of threatened or endangered species and critical habitats within the action area to determine if there are any species or critical habitats protected by the ESA that could potentially be affected by the proposed actions. The action area is included within the geographical boundaries of Tooele County and specifically consists of the following:

1. The ISFSI site: 820 acres located in the northwest corner of the reservation in Township 5 South (T5S), Range 8 West (R8W), all of Section 6, and portions of Sections 5, 7, and 8.
2. The utility corridor and access road: 202 acres from the eastern boundary of the ISFSI site to the Skull Valley Road. The utility corridor would be located in T5S, R8W, Sections 7, 8, and 9.

Exhibit B.1-1

R. Harris

- 2 -

3. The transportation routes:

- a. Rail Line: Proposed to originate at Skunk Ridge and run along the base of the Cedar Mountains to the ISFSI site. The proposed rail line would be located in T1N, R9W Sections 17, 18, 20, 21, 22, 27, and 34; T1S, R9W Sections 3, 10, 15, 22, 27, and 34; T2S R9W Sections 3, 10, 15, 22, 27, and 34; T3S, R9W Sections 3, 10, 15, 22, 27, and 34; T4S, R9W Sections 3, 10, 15, 22, 27, and 34; T5S, R9W Sections 1, 2, and 3; and T5S, R8W Section 6.
- b. Intermodal transfer point (ITP): The ITP may be used to transfer fuel from rail cars to heavy/haul trailers for shipment to the ISFSI site via Skull Valley Road. The ITP would be located approximately 1.8 miles west of the intersection of I-80 and Skull Valley Road (T1S, R8W Sections 1 and 12).

Enclosed is a map which identifies the action area.

After assessing the information provided by you, NRC, BLM, and BIA, will determine what additional actions are necessary to comply with the ESA consultation process.

If you have any questions, please contact Scott Flanders, Senior Environmental Project Manager, at (301) 415-1172.

Sincerely,



Mark S. Delligatti, Senior Project Manager  
Spent Fuel Licensing Section  
Licensing and Inspection Directorate  
Spent Fuel Project Office  
Office of Nuclear Material Safety  
and Safeguards

Docket No.: 72-22

Enclosure: As stated

cc: Service Lists



United States Department of the Interior  
FISH AND WILDLIFE SERVICE  
UTAH FIELD OFFICE  
LINCOLN PLAZA  
145 EAST 1300 SOUTH, SUITE 404  
SALT LAKE CITY, UTAH 84115



In Reply Refer To  
(CO/KS/NE/UT)

June 22, 1999

Mark S. Delligatti, Senior Project Manager  
Spent Fuel Licensing Section  
Licensing and Inspection Directorate  
Spent Fuel Project Office  
Office of Nuclear Material Safety and Safeguards  
Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

RE: Private Fuel Storage Facility

Dear Mr. Delligatti:

We have received your request for a list of endangered and threatened species that may occur in the area of influence of your proposed action. Below is a list of threatened, endangered, and conservation agreement species that may occur within the area of influence of your proposed action. While conservation agreement species have no legal protection under the Endangered Species Act, we ask that you try to avoid them if they are found in the area.

<u>Common Name</u>	<u>Scientific Name</u>	<u>Status*</u>
Bald Eagle <sup>3</sup>	<i>Haliaeetus leucocephalus</i>	T
Least Chub	<i>Notichthys plegethontis</i>	PE
Peregrine Falcon <sup>1</sup>	<i>Falco peregrinus</i>	E
Ute Ladies'-tresses	<i>Spiranthes diluvialis</i>	T
Spotted Frog	<i>Rana luteiventris</i>	CA

\*  
T = threatened  
E = endangered  
PE = proposed endangered  
CA = conservation agreement species  
1 = Nests in this county of Utah  
3 = Wintering populations (only four known nesting pairs in Utah)

Only a Federal agency can enter into formal Endangered Species Act section 7 consultation with the Service. A Federal agency may designate a non-Federal representative to conduct informal consultation or prepare a biological assessment by giving written notice to the Service of such a designation. The ultimate responsibility for compliance with ESA section 7, however, remains with the Federal agency.

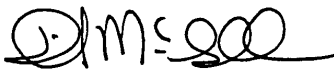
Exhibit B.1-2

The proposed action should be reviewed and a determination made if the action would affect any listed species or their critical habitat. A determination should also be made as whether or not the action is likely to jeopardize the continued existence of proposed species or result in the destruction or an adverse modification of any critical habitat proposed for such species. If the determination is "may affect" for listed species, you must request in writing formal consultation from the Field Supervisor, at the address given above. In addition, if you determine that the proposed action is likely to jeopardize the continued existence of proposed species or result in the destruction or adverse modification of proposed critical habitat, you must confer with this office. At that time, you should provide this office a copy of the biological assessment and any other relevant information that assisted you in reaching your conclusion.

Your attention is also directed to Section 7(d) of the Endangered Species Act, as amended, which underscores the requirement that the Federal agency or the applicant shall not make any irreversible or irretrievable commitment of resources during the consultation period which, in effect, would deny the formulation or implementation of reasonable and prudent alternatives regarding their actions on any endangered or threatened species.

If we can be of further assistance or if you have any questions, please feel free to contact Ted Owens of our office at (801)524-5001 extension 144.

Sincerely,

  
for Reed E. Harris  
Utah Field Supervisor



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

June 16, 2000

Mr. Reed Harris, Field Supervisor  
U.S. Department of Interior  
Fish and Wildlife Service  
Utah Field Office  
Lincoln Plaza, Suite 404  
145 East 1300 South  
Salt Lake City, Utah 84115

SUBJECT: FORWARD THE DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR THE  
PROPOSED PRIVATE FUEL STORAGE FACILITY AND REQUEST FOR  
CONCURRENCE ON THE DETERMINATION OF EFFECT ON FEDERALLY  
LISTED SPECIES AND THEIR CRITICAL HABITATS

Dear Mr. Harris:

By letter dated June 14, 1999, the U.S. Nuclear Regulatory Commission (NRC), the U.S. Bureau of Indian Affairs (BIA), and the U.S. Bureau of Land Management (BLM) informed you that the three agencies are cooperating in the preparation of a draft environmental impact statement (DEIS) for an independent spent fuel storage installation (ISFSI) on the Reservation of the Skull Valley Band of Goshute Indians and for a rail line that would be located on land managed by the BLM and used to transport spent nuclear fuel to the proposed ISFSI. It should also be noted that a fourth Federal agency, the U.S. Surface Transportation Board (STB), is now cooperating in the preparation of the DEIS. On January 5, 2000, Private Fuel Storage, L.L.C. (PFS) submitted an application to STB requesting approval to construct and operate the aforementioned rail line. Pursuant to 49 CFR Part 1105, STB is required to prepare an environmental impact statement (EIS) as part of its review process for applications to construct and operate new rail lines.

The June 14, 1999, letter also provided a brief description of the proposed action and requested a list of threatened or endangered species and critical habitats within the action area. By letter dated June 22, 1999, you provided a list of threatened, endangered, and conservation agreement species that may occur in the area of influence of the proposed action. The letter did not indicate any designated critical habitats that might be found in the area of influence of the proposed action. On March 22, 2000, Mr. Scott Flanders of the NRC spoke with Mr. Ted Owens of your staff to confirm that the list of threatened, endangered, and conservation agreement species you provided was still appropriate for the area of influence of the proposed action. Mr. Owens noted that with the exception of the peregrine falcon (*Falco peregrinus*), which was de-listed from the Federal endangered species list (64 FR 46542, August 25, 1999), the list remained appropriate for the area of influence of the proposed action.

After a review of the potential impacts of the proposed action and consideration of the mitigation measures the cooperating agencies recommend be required for the proposed action, the cooperating agencies have determined that the effects on listed species or their designated critical habitat are expected to be discountable or insignificant, and therefore, have concluded

Exhibit B.1-3

R. Harris

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that the proposed action is not likely to adversely affect any endangered or threatened species within the area of influence of the proposed action. The supporting basis for this conclusion is included in the enclosed DEIS. Specifically, Sections 4.4, 5.4, and 6.4 discuss the environmental effects of the proposed action on ecological resources, including endangered and threatened species. The cooperating agencies are requesting your concurrence with the determination that the proposed action is not likely to adversely affect any endangered or threatened species or adversely modify any critical habitat.

If you have any questions, please contact Scott Flanders, Senior Environmental Project Manager, at (301) 415-1172.

Sincerely,



Mark S. Delligatti, Senior Project Manager  
Spent Fuel Licensing Section  
Licensing and Inspection Directorate  
Spent Fuel Project Office  
Office of Nuclear Material Safety  
and Safeguards

Docket No.: 72-22

Enclosure: DEIS

cc: Service Lists



United States Department of the Interior  
FISH AND WILDLIFE SERVICE

UTAH FIELD OFFICE  
LINCOLN PLAZA  
145 EAST 1300 SOUTH, SUITE 404  
SALT LAKE CITY, UTAH 84115

12-22  
PFS Service Lists FYI.  
NRC 7/21/00

In Reply Refer To

(CO/KS/NE/UT)

June 30, 2000

Mark S. Delligatti  
U.S. Nuclear Regulatory Commission  
Mail Stop O-13D13  
Washington, D.C. 20555-0001

RE: Proposed Private Fuel Storage Facility at Skull Valley Band and Goshute Indian  
Reservation

Dear Mr. Delligatti:

In response to your letter of June 16, 2000, we concur with your "no effect" determination for threatened and endangered species and critical habitat. Should project plans change, or if additional information on the distribution of listed or proposed species becomes available, this determination may be reconsidered.

Only a Federal agency can enter into formal Endangered Species Act section 7 consultation with the Service. A Federal agency may designate a non-Federal representative to conduct informal consultation or prepare a biological assessment by giving written notice to the Service of such a designation. The ultimate responsibility for compliance with ESA section 7, however, remains with the Federal agency.

We appreciate your interest in conserving endangered species. If further assistance is needed or you have any questions, please contact Larry England, at (801) 524-5001 extension 138.

Sincerely,

Reed E. Harris  
Utah Field Supervisor

**This is your future. Don't leave it blank. - Support the 2000 Census**

**Exhibit B.1-4**



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

May 18, 1999

Mr. Max Evans  
State Historic Preservation Officer  
Utah State Historical Society  
300 Rio Grande  
Salt Lake City, Utah 84101

SUBJECT: INITIATION OF THE NATIONAL HISTORIC PRESERVATION ACT SECTION  
106 PROCESS FOR THE PROPOSED PRIVATE FUEL STORAGE FACILITY

Dear Mr. Evans:

Private Fuel Storage, Limited Liability Corporation (PFS) submitted a license application, dated June 20, 1997, to the Nuclear Regulatory Commission (NRC) to receive, transfer, package, and possess spent nuclear fuel in an independent spent fuel storage facility (ISFSI) on the reservation of the Skull Valley Band of Goshute Indians. In addition to receiving a license from NRC, PFS must receive a right-of-way from the U.S. Bureau of Land Management (BLM) for construction and use of a rail line over public lands to transport spent nuclear fuel to the ISFSI and approval from U.S. Bureau of Indian Affairs (BIA) for a proposed lease agreement between the Skull Valley Band of Goshute Indians and PFS. The rail line would traverse land that is included within the BLM Pony Express Resource Management Plan (RMP). The current Pony Express RMP does not allow for major right-of-ways such as a rail line in this area and would require an amendment to the RMP prior to granting the requested right-of-way.

NRC, BIA, and BLM have determined that each of these federal actions constitutes undertakings as defined in Title 36, Code of Federal Regulations (36 CFR), Section 800.2 (o). Because NRC's, BIA's, and BLM's required actions for the construction and operation of the PFS facility are related, the agencies have agreed to cooperate in the preparation of an environmental impact statement (EIS) for these actions. Similarly, the agencies have also agreed to participate jointly in the Section 106 process and other required consultations. The areas of potential effect (APE) for the three undertakings include:

1. The ISFSI site: 820 acres located in the northwest corner of the reservation in Township 5 South (T5S), Range 8 West (R8W), all of Section 6, and portions of Sections 5, 7, and 8.
2. The utility corridor and access road: 202 acres from the eastern boundary of the ISFSI site to the Skull Valley Road. The utility corridor would be located in T5S, R8W, Sections 7, 8, and 9.
3. The transportation routes:
  - a. Rail Line: Proposed to originate at Skunk Ridge and run along the base of the Cedar Mountains to the ISFSI site. The proposed rail line would be located in T1N, R9W Sections 17, 18, 20, 21, 22, 27, and 34; T1S, R9W Sections 3, 10, 15, 22, 27, and 34; T2S R9W Sections 3, 10, 15, 22, 27, and 34; T3S, R9W Sections 3, 10, 15, 22, 27, and 34; T4S, R9W

Exhibit B.2-1

M. Evans

- 2 -

3, 10, 15, 22, 27, and 34; T5S, R9W Sections 1, 2, and 3; and T5S, R8W Section 6.

- b. Intermodal transfer point (ITP): The ITP will be used to transfer fuel from rail cars to heavy/haul trailers for shipment to the ISFSI site via Skull Valley Road. The ITP will be located approximately 1.8 miles west of the intersection of I-80 and Skull Valley Road (T1S, R8W Sections 1 and 12).

Enclosed is a map which shows the APE.

Pursuant to 36 CFR 800.4(a) (ii), NRC, BIA, and BLM are requesting the views of the State Historic Preservation Officer on further actions to identify historic properties that may be affected by each agency's undertaking. In accordance with 36 CFR 800.4(a)(i) and (iii), a review of available information on historic properties in the APE is being conducted as part of the EIS preparation, and the agencies conducted public scoping to solicit information on environmental issues, including cultural resources, related to the PFS proposal.

After assessing the information provided by you and the information received from other interested parties, NRC, BLM, and BIA will determine if any further actions are necessary to identify historic properties under the provisions of 36 CFR 800.4 (2).

If you have any questions, please contact Scott Flanders, Senior Environmental Project Manager, at (301) 415-1172.

Sincerely,

original /s/ by

Mark S. Delligatti, Senior Project Manager  
Spent Fuel Licensing Section  
Licensing and Inspection Directorate  
Spent Fuel Project Office  
Office of Nuclear Material Safety  
and Safeguards

Docket No.: 72-22

Enclosure: As stated

cc: Service Lists



Michael O. Leavitt  
Governor  
Max J. Evans  
Director

## State of Utah

Department of Community and Economic Development  
Division of State History  
Utah State Historical Society

380 Rio Grande  
Salt Lake City, Utah 84101-1182  
(801) 533-3500 FAX: 533-3503 TDD: 533-3503  
utahs@history.state.ut.us http://history.utah.org



June 24, 1999

Mark S. Dellagitti, Senior Project Manager  
Spent Fuel Licensing Section  
Licensing and Inspection Directorate  
Spent Fuel Project Office  
Office of Nuclear Material Safety and Safeguards  
Nuclear Regulatory Commission  
Washington DC 20555-0001

RE: Initiation of the National Historic Preservation Action Section 106 Process for the Proposed  
Private Fuel Storage Facility

In Reply Please Refer to Case No. 97-0013

Dear Mr. Dellagitti:

The Utah State Historic Preservation Office received the above referenced letter on May 24, 1999. After consideration of NRC's request for SHPO's views concern further actions to identify historic properties that may be affected by the agencies undertaking, the Utah Preservation Office provides the following consultation in accordance with §36CFR 800.4.

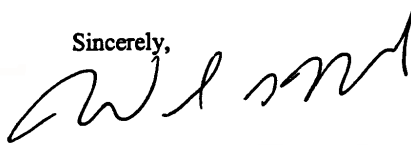
1. Consultation needs to be initiated with the Hawaiian and Polynesian communities here in Utah concerning the town site at Iosepa. The site has a cemetery and historic foundations, and each Memorial Day the site is used a gathering place to celebrate a community's heritage.
2. Consultation needs to be initiated with tribes other than the Skull Valley Band of the Goshute, including the Northern Ute, Paiute, Northern Band of the Shoshoni and other Goshute Bands.
3. Lastly, consultation needs to be initiated with the Army concerning the Dugway Proving Grounds, the Skull Valley Road is one of two major access routes to the base.

*Preserving and Sharing Utah's Past for the Present and Future*

Exhibit B.2-2

As specific survey designs are developed to address potential cultural resources in the area of potential effect, the USHPO will comment on the proposed identification methods. This information is provided on request to assist the Nuclear Regulatory Commission with its Section 106 responsibilities as specified in §36CFR80. If you have questions, please contact Jim Dykmann at (801) 533-3555.

Sincerely,

A handwritten signature in black ink, appearing to read 'Wilson G. Martin', written in a cursive style.

Wilson G. Martin  
Deputy State Historic Preservation Officer

JLD:97-0013 OFR

F:\CULTURAL\JIM\97-0013.wpd

c: Connie Nakahara, Utah Dept. Of Environmental Quality  
c: John Harja, Governors Office



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

November 9, 1999

Mr. Max Evans  
State Historic Preservation Officer  
Utah State Historical Society  
300 Rio Grande  
Salt Lake City, Utah 84101

SUBJECT: NATIONAL HISTORIC PRESERVATION ACT SECTION 106 PROCESS FOR  
THE PROPOSED PRIVATE FUEL STORAGE FACILITY

Dear Mr. Evans:

On September 1, 1999, members of the U.S. Nuclear Regulatory Commission (NRC) staff and representatives of the U.S. Bureau of Indian Affairs (BIA) and the U.S. Bureau of Land Management (BLM) met with Mr. Jim Dykman of your office to discuss your response to the NRC, BLM, and BIA May 18, 1999, letter initiating the Section 106 process for the proposed Private Fuel Storage Facility (PFSF). During the meeting, it was noted that the Advisory Council on Historic Preservation (Council) recently revised the implementing regulations (36 CFR Part 800) for the Section 106 process. The revised regulations became effective June 17, 1999, and were published in the Federal Register, 64 FR 27043, May 18, 1999. Since the Section 106 process for PFSF was initiated prior to the effective date of the revised regulations, there is some flexibility in the version of the regulations that can be used to complete the consultation. At the meeting, the NRC staff and representatives of BLM and BIA thought it appropriate to use the revised regulations. However, we agreed to further review the issue and to provide a final position.

The NRC, BIA, and BLM have reviewed, in greater detail, the Council's guidance (copy enclosed) regarding the use of the revised regulations for cases already in progress. In its guidance, the Council states "Even if an agency has initiated the Section 106 process prior to June 17, 1999, the revised regulations should be applied unless circumstances strongly warrant completing the process under the former regulations." The Council's guidance includes four factors, listed below, that should be considered in deciding which regulations should be used to complete the process.

- How long ago did the agency initiate the process?

If the process was initiated so long ago that the agency might have reasonably expected that the former regulations would apply, it might make sense to continue to apply those regulations.

- How far into the process is the case?

If a case has been nearly completed under the former regulations, it might be more expedient to complete the process under the former regulations. If the process has only begun, the revised regulations should be applied.

- Will continued application of the former regulations create any delay, expense, or hardship?

Exhibit B.2-3

November 9, 1999  
- 2 -

M. Evans

If so, it is more reasonable to apply the revised regulations.

- Will continuing to use the former regulations deprive any party (e.g. THPO, other tribes, applicants, local governments) or the public of an opportunity to participate?

If so, the revised regulations should apply.

After considering these factors, the NRC, BIA, and BLM believe it is appropriate to use the revised regulations. The initiation of the Section 106 process began with the NRC, BLM, and BIA letter to you on May 18, 1999. Given that the process began recently, we believe that the revised regulations can be effectively implemented without a delay in the process. Furthermore, NRC, BIA, and BLM believe that the revised regulations would require that the Skull Valley Band of Goshute Indians be included as a consulting party for the portions of the area of potential effect that is on tribal land. Continued use of the existing regulations could deprive the Band of an opportunity to participate in the Section 106 process in the same capacity. Inclusion of the Band in the process as a consulting party is consistent with the intent of the 1992 amendment to the National Historic Preservation Act (NHPA) which placed major emphasis on the role of Indian tribes and other Native Americans in the Section 106 process. Also, we believe including the Band as a consulting party more appropriately reflects the NRC, BIA, and BLM's commitment to government-to-government relations with Indian tribes.

We welcome your response to this position on the use of the revised regulations, and look forward to working with your office to complete the Section 106 process. If you have any questions about this letter, please contact me at (301) 415-8518, or the NRC Environmental Project Manager, Scott Flanders, at (301) 415-1172.

Sincerely,

(Original Signed by:)

Mark S. Delligatti, Senior Project Manager  
Licensing Section  
Spent Fuel Project Office  
Office of Nuclear Material Safety  
and Safeguards

Docket No. 72-22

Enclosure: Section 106 Regulations Users Guide

cc: Service Lists

## Section 106 Regulations Users Guide

### 1. Regs Summary

### 2. Major Changes

### 3. Regs Text

### 4. Regs Flow Chart

### 5. Regs Flow Chart

### Explanatory

### Material

### 6. Transition

### Questions and

### Answers

### 7. Section-by-Section

### Questions and

### Answers

### 8. National

### Register

### Evaluation Criteria

### 9. Archeology

### Guidance

# ACHP 106

## Section 106 Regulations Users Guide 6. Transition Questions and Answers

### Introduction

1. Are existing Memoranda of Agreement and Programmatic Agreements still valid?

2. What interpretation applies to provisions of MOAs/PAs executed before the effective date of the new regulations that refer to the former regulations by section numbers?

3. How are existing MOAs/PAs to be interpreted that do not specifically refer to a section of the former regulations but refer instead to the Council's regulations in a general manner?

4. Under what regulations must cases in progress be handled?

5. How are MOAs prepared under the former regulations to be executed when they are received by the Council after the new regulations go into effect?

6. If it is decided that the former regulations are to be used for one purpose under an MOA/PA, is use of the revised regulations precluded for another purpose in the same MOA/PA?

7. To what address must case materials be sent?

### Summary

### Introduction

The Advisory Council on Historic Preservation has revised the regulations that implement Section 106 of the National Historic Preservation Act. Published in the *Federal Register* (64 FR 27043-27084) May 18, 1999, the revised regulations went into effect June 17, 1999. This briefing sheet addresses expected questions during the transition from the former regulations to the revised ones.

The regulation revisions are the culmination of careful Council review of the Section 106 process, which was last amended in 1986. This review reaffirmed the basic tenets of the Section 106 process, while introducing new flexibility and options for agencies to meet their legal obligations. The process continues to focus on constructive resolution of potential conflicts between a Federal undertaking and historic properties through consultation and agreement among the agency, the State or Tribal Historic Preservation Officer

Enclosure

12/8/99 12:37 PM

(SHPO/THPO), and the Council.

**1. Are existing Memoranda of Agreement and Programmatic Agreements still valid?**

Yes. Memoranda of Agreement (MOAs) and Programmatic Agreements (PAs) executed under the former regulations are still valid. The revised regulations contain changes to the process by which agreements will be developed and executed after June 17, 1999.

**2. What interpretation applies to provisions in Memoranda of Agreement and Programmatic Agreements executed before the effective date of the new regulations that refer to the former regulations by section numbers?**

When the parties to existing MOAs and PAs entered into those agreements, the former regulations were in place. By referring to sections of those regulations, the signatories expressed their intent to be bound by the terms of the regulations existing at the time the agreements were executed.

Unless a particular MOA or PA expressly states that the most current version of the regulations is to apply, each MOA or PA must be interpreted under the version of the regulations that was current at the time the agreement was executed. If an MOA or PA states that the most current version of the regulations is to govern the agreement's terms, then the revised regulations should be used. Few, if any, agreements contain such a provision.

Under both the former and the revised regulations and under most MOAs and PAs, signatories are entitled to seek amendment to the agreement. Thus, if a signatory is unhappy with a reference to a section of the former regulations or its interpretation, that party would be free to seek amendment to bring the MOA or the PA under the revised regulations.

However, except in a highly unusual situation, it is anticipated that amendments will be pursuant to the revised regulations. In addition, all the signatories to the original document must agree to the amendment.

**3. How are existing MOAs and PAs to be interpreted that do not specifically refer to a section of the former regulations but refer instead to the Council's regulations in a general manner?**

By including in the Memoranda of Agreement a general reference to the Council's regulations rather than a specific reference, the parties agreed to a general process and not to specific steps as might be contained in a particular section or subsection of the former regulations.

This sort of general reference is often seen in stipulations in MOAs that require the agency to seek the comments of the Council under 36 CFR Part 800 if the provisions of the MOA cannot be met. Although it could be shown that the parties intended the processes contained in the former regulations to apply, it is more reasonable to assume that the most current process is applicable. Therefore, new consultation required by such general references, including that occurring in the context of an MOA, should be conducted under the revised regulations.

Again, parties may seek amendment of MOAs or PAs to clarify any ambiguities.

#### **4. Under what regulations must cases in progress be handled?**

Even if an agency has initiated the Section 106 process prior to June 17, 1999, the revised regulations should be applied unless circumstances strongly warrant completing the process under the former regulations. This approach should not cause delay in completing the Section 106 process.

Generally, regarding cases in progress when the revised regulations go into effect, it will be assumed that the revised regulations apply unless the consulting parties agree to the contrary. The parties should consider the following factors in deciding which regulations to use to complete the process:

- How long ago did the agency initiate the process? If the process was initiated so long ago that the agency might have reasonably expected that the former regulations would apply, it might make sense to continue to apply those regulations.
- How far into the process is the case? If a case has been nearly completed under the former regulations, it might be more expedient to complete the process under the former regulations. If the process has only begun, the revised regulations should be applied.
- Will continued application of the former regulations create any delay, expense, or hardship? If so, it is more reasonable to apply the revised regulations.

- Will continuing to use the former regulations deprive any party (e.g. THPO, other tribes, applicants, local governments) or the public of an opportunity to participate? If so, the revised regulations should apply.

If the Agency Official, SHPO, and Council cannot agree, then the revised regulations should apply.

**5. How are Memoranda of Agreement prepared under the former regulations to be executed when they are received by the Council after June 17, 1999?**

When agreements that have been prepared under the former regulations come to the Council for consideration and signature, the Council will assume that the revised regulations apply to its own actions with regard to those agreements. The Council will treat them as MOAs under §800.6(b)(2) of the revised regulations, requiring the Council's signature.

Although the appropriate documentation required by the revised regulations should be submitted, the Council will apply the documentation requirements flexibly when, in its estimation, circumstances so warrant.

**6. If it is decided that the former regulations are to be used for one purpose under an MOA or a PA, is use of the revised regulations precluded for another purpose in the same MOA or PA?**

Although it is preferable to apply only one set of regulations to any given MOA or PA, there may be circumstances in which it would be more reasonable to apply both the former and the revised regulations for different purposes. For example, when an existing MOA or PA refers to a specific section of the former regulations and it is clear that the parties intended the particular terms of that section to apply, then the specified section of the former regulations may be used.

The same MOA or PA may also require the parties to seek Council comment when the terms of the agreement cannot be met. For this second reference, the revised regulations would apply. (See answer to [question #3](#).)

**7. To what address must case materials be sent?**

All case materials developed under the regulations should be sent to the Director, Office of Planning and Review. Materials for cases originating in localities east of the Mississippi River, as well as in Minnesota, Iowa, and Missouri, should be sent to ACHP, 1100 Pennsylvania Ave., NW, Suite 809, Washington, DC 20004. Materials for cases originating west of the Mississippi River (exclusive of Minnesota, Iowa, and Missouri) should be sent to ACHP, 12136 W. Bayaud Ave., Suite 330, Lakewood, CO 80228.

### Summary

Specific references to sections of the former regulations in existing agreements should be interpreted under the version of the regulations that existed at the time the agreement was executed, unless the MOA or PA contains a provision to the contrary or the signatories agree that the MOA or PA should be interpreted under the revised regulations. General references to the Council's regulations in existing MOAs or PAs should be interpreted as references to the revised regulations unless the MOA clearly indicates otherwise.

Cases in progress generally should follow the revised regulations. However, the consulting parties, who began consultation before the effective date of the new regulations, and having considered all pertinent factors, may agree to complete the process under the former regulations. Such agreement should be in writing and should state the reasons for the decision.

The Council staff is available to answer any questions and provide guidance on application of the regulations in specific circumstances. For questions related to the regulations, call (202) 606-8508, or e-mail [regs@achp.gov](mailto:regs@achp.gov).

[Return to top of page](#)



*If you have problems or comments concerning our website, please send e-mail to: [ACHP@ACHP.gov](mailto:ACHP@ACHP.gov). We welcome your feedback.*



**Michael O. Leavitt**  
Governor  
**Max J. Evans**  
Director

## State of Utah

Department of Community and Economic Development  
Division of State History  
Utah State Historical Society

300 Rio Grande  
Salt Lake City, Utah 84101-1182  
(801) 533-3500 FAX: 533-3503 TDD: 533-3502  
ushs@history.state.ut.us <http://history.utah.org>



November 23, 1999

Mark S. Delligatti, Senior Project Manager  
Licensing Section  
Spent Fuel Project Office  
Office of Nuclear Safety and Safeguards  
Nuclear Regulatory Commission  
Washington DC 20555-001

RE: Proposed Private Fuel Storage Facility – Skull Valley, Utah

In Reply Please Refer to Case No. 97-0013

Dear Mr. Delligatti:

The Utah State Historic Preservation Office received the above referenced request on November 16, 1999. After review of the material provided, the Utah Preservation Office understands that this project will proceed pursuant to the revised regulations for Section 106 Compliance.

This information is provided on request to assist with Section 106 responsibilities as specified in §36CFR800. If you have questions, please contact Jim Dykmann at (801) 533-3555. His email address is: [jdykman@history.state.ut.us](mailto:jdykman@history.state.ut.us)

Sincerely,

A handwritten signature in black ink, appearing to read "Wilson G. Martin".

Wilson G. Martin  
Deputy State Historic Preservation Officer

JLD:97-0013 OFR

*Preserving and Sharing Utah's Past for the Present and Future*

**Exhibit B.2-4**



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

October 6, 2000

Max Evans, Director  
Utah State Historic Preservation Office  
300 South Rio Grande  
Salt Lake City, Utah 84101

SUBJECT: REQUEST FOR CONCURRENCE ON ELIGIBILITY DETERMINATIONS FOR  
THE ARCHEOLOGICAL AND HISTORIC SITES IDENTIFIED WITHIN THE AREA  
OF POTENTIAL EFFECT FOR THE PROPOSED PRIVATE FUEL STORAGE  
FACILITY

Dear Mr. Evans:

By letter dated May 18, 1999, the Nuclear Regulatory Commission (NRC), the Bureau of Land Management (BLM), and the Bureau of Indian Affairs (BIA), initiated consultation as required by Section 106 of the National Historic Preservation Act (NHPA) for the proposed Private Fuel Storage (PFS) facility. In the letter, NRC, BIA, and BLM described the proposed project, the area of potential effect (APE), and each Federal agency's required action. The Federal agencies also requested, pursuant to 36 CFR 800.4(a)(ii), the views of the Utah State Historic Preservation Officer with regard to further actions that could be taken by the Federal agencies to identify historic properties. By letter dated June 24, 1999, you responded and identified several additional actions the Federal agencies could take to identify historic properties. Your letter also noted that you would comment on the identification methods of future cultural resource surveys within the APE. It should be noted that since the May 18, 1999, letter, the Surface Transportation Board (STB) has agreed to cooperate in the preparation of the Environmental Impact Statement (EIS) and required consultation activities such as those required by Section 106 of the NHPA. The STB must approve construction of the proposed rail line from Skunk Ridge, Utah, to the proposed PFS facility.

In May and June of 1999 and in June 2000, a PFS contractor, P-III Associates, performed a Class III cultural resources inventory in Skull Valley, Utah. All portions of the APE were included in the study area. At the request of the BLM, PFS will provide you with a copy of the report documenting the cultural resource inventory. For all sites within the APE, the report includes a recommendation with regard to each site's eligibility for inclusion in the National Register of Historic Places. The Federal agencies have reviewed the report and concur with the eligibility recommendations for all archeological and historic sites within the APE. Enclosed is a list of sites and their eligibility recommendation. The Federal agencies request your concurrence, within 30 days, on the determination of eligibility following the recommendations in the report.

The Federal agencies are meeting with consulting parties to discuss the eligibility recommendations included in the report and potential mitigation measures for anticipated adverse impacts to the cultural resources within the APE. The Federal agencies are scheduled to meet with Mr. Jim Dykmann of your staff on October 24, 2000. After meeting with the

Exhibit B.2-5

M. Evans

-2-

consulting parties, the Federal agencies will prepare a treatment plan and Memorandum of Agreement (MOA) for your review and the review of other signatories to the MOA.

If you have any questions, please contact Scott Flanders (NRC) at (301) 415-1172, Laird Naylor (BLM) at (801) 977-4357, Garry Cantley (BIA) at (602) 379-6750, or Phillis Johnson-Ball (STB) at (202) 565-1539.

Sincerely,



Mark S. Delligatti, Senior Project Manager  
Spent Fuel Licensing Section  
Licensing and Inspection Directorate  
Spent Fuel Project Office  
Office of Nuclear Material Safety  
and Safeguards

Docket No. 72-22

Enclosure: List of Sites and Eligibility Recommendations

cc: Service Lists

Eligibility Recommendations for sites within the APE for the proposed PFS Facility

<u>Site Number</u>	<u>Site Name</u>	<u>NRHP Status</u>
42TO709	Emigrant Trail/Hastings Cutoff	Eligible
42TO1187	Rock alignment and cairns	Unevaluated
42TO1343	Buried AT&T telephone line	Not Eligible
42TO1409	U.S. Route 40	Eligible
42TO1410	"New" Victory Highway	Eligible
42TO1411	"Old" Victory Highway	Eligible
42TO1412	Western Union telegraph line	Eligible
42TO1413	Western Pacific Railroad	Eligible
42TO1414	Historic habitation/gas station	Not Eligible
42TO1415	Gas Station	Not Eligible
42TO1416	Road to Deep Creek	Eligible
42TO1417	Road to Sulphur Spring or Eight-Mile Spring	Eligible

Enclosure



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

October 19, 2000

Max Evans, Director  
Utah State Historic Preservation Office  
300 South Rio Grande  
Salt Lake City, Utah 84101

SUBJECT: CONSULTATION UNDER SECTION 106 NATIONAL HISTORIC PRESERVATION ACT  
OF 1966

Dear Mr. Evans:

By letter dated October 6, 2000, the Nuclear Regulatory Commission (NRC) staff, the Bureau of Land Management (BLM), the Bureau of Indian Affairs (BIA), and the Surface Transportation Board (STB) requested your concurrence on the eligibility determinations under the National Historic Preservation Act (NHPA) in the P-III Associates report for the proposed Private Fuel Storage facility. As stated in the letter, representatives of the NRC staff, BLM, BIA, and STB were scheduled to meet with Mr. Jim Dykmann of your staff on October 24, 2000, to discuss the eligibility recommendations and potential mitigation measures for anticipated adverse impacts to cultural resources within the area of potential effect. On October 10, 2000, Mr. Dykmann canceled the meeting, and on October 13, 2000, Ms. Lynette Lloyd, of your staff, informed Mr. Scott Flanders, of the NRC staff, that all future consultation activity regarding the proposed Private Fuel Storage facility should be conducted with the Utah Governor's office.

Pursuant to 36 C.F.R. Part 800, Federal agencies should consult with the State Historic Preservation Officer (SHPO), and shall follow the procedures for initiating and performing such consultation. The term SHPO as defined in 36 C.F.R. § 800.16 is "the official appointed or designated pursuant to section 101(b)(1) of the [NHPA] to administer the State historic preservation program or a representative designated to act for the State Historic Preservation Officer." In light of your cancellation of the meeting scheduled for October 24, 2000, and your instruction to us to communicate with the Governor's office regarding this matter, it appears to us that you are withdrawing from the Section 106 consultation process. Please confirm, in writing, within 15 days of the date of this letter, whether you are withdrawing from the consultation process or are continuing to consult. If you are continuing to consult, please identify in your confirmation letter the identity of the SHPO or the representative designated to act for the SHPO, with whom we should communicate regarding this matter, and that person's address and telephone number. If we do not hear from you within 15 days, we will assume that you have withdrawn from the Section 106 consultation process for the Private Fuel Storage proposal.

Sincerely,

Mark S. Delligatti, Senior Project Manager  
Spent Fuel Licensing Section  
Licensing and Inspection Directorate  
Spent Fuel Project Office  
Office of Nuclear Material Safety  
and Safeguards

Docket No. 72-22

Exhibit B.2-6



MICHAEL O. LEAVITT  
GOVERNOR

STATE OF UTAH  
OFFICE OF THE GOVERNOR  
SALT LAKE CITY  
84114-0601

OLENE S. WALKER  
LIEUTENANT GOVERNOR

November 1, 2000

Mark S. Delligatti, Senior Project Manager  
Spent Fuel Licensing Section  
Licensing and Inspection Directorate  
Spent Fuel Project Office  
Office of Nuclear Material Safety and Safeguards  
United State Nuclear Regulatory Commission  
Washington DC 20555-0001

RE: Request for Consultation under Section 106, National Historic Preservation Act, 1966,  
Docket No. 72-22

In Reply Please Refer to Section 106 Case No. 97-0013

Dear Mr. Delligatti:

For the purpose of consultation regarding the Private Fuel Storage Project in Skull Valley, Tooele County, Utah, I retain the authority of the State Historic Preservation Officer, and have assigned Natalie Gochmour, State Planning Coordinator, Room 116, State Capitol, Salt Lake City, Utah 84114, (801) 538-1027, to be the contact on this project. This retention of authority is applicable to this project only.

Sincerely,

A handwritten signature in black ink that reads "Michael O. Leavitt".

Michael O. Leavitt  
Governor

c: Scott Flanders, Spent Fuel Licensing Section, Licensing and Inspection Directorate, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, United State Nuclear Regulatory Commission, Washington DC 20555-0001

c: Max J. Evans, Utah State Historic Preservation Officer

Note: Postmarked 11/15/00  
Recvd by VLT 11/20/00

Exhibit B.2-7



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

December 5, 2000

The Honorable Michael O. Leavitt  
Governor of the State of Utah  
Office of the Governor  
Salt Lake City, UT 84114-0601

SUBJECT: YOUR LETTER DATED NOVEMBER 1, 2000

Dear Governor Leavitt:

I am responding to your November 1, 2000, letter, which was postmarked November 15, 2000, and which I received November 20, 2000, informing us that you have retained the authority of the State Historic Preservation Officer (SHPO) for the proposed Private Fuel Storage, L.L.C. (PFS) project, and that you have appointed Ms. Natalie Gochnour, Utah State Planning Coordinator, to serve as the SHPO contact person on this project.

We appreciate your clarification of the roles of the previously appointed SHPO and the Utah State Planning Coordinator for the proposed PFS project. I understand from your letter that the State of Utah now has two SHPOs: (1) Michael O. Leavitt, Governor of the State of Utah, with respect to the PFS project, and (2) Max J. Evans, the previously appointed Utah SHPO, for all other projects.

The U.S. Nuclear Regulatory Commission staff and the cooperating Federal agencies (the U.S. Department of Interior's Bureau of Land Management and Bureau of Indian Affairs and the Surface Transportation Board) wish to express our gratitude to Mr. Jim Dykmann of the staff of the Utah SHPO, who has served as our contact in the consultation process up until this point. Mr. Dykmann conducted himself in a thoroughly professional manner and was very responsive. We look forward to a similar relationship with Ms. Gochnour for the remainder of this consultation process.

Sincerely,

Mark S. Delligatti, Senior Project Manager  
Spent Fuel Licensing Section  
Licensing and Inspection Directorate  
Spent Fuel Project Office  
Office of Nuclear Material Safety  
and Safeguards

Docket No. 72-22

cc: PFS EIS Service List  
Natalie Gochnour, Utah State Planning Coordinator  
Max J. Evans, Utah State Historic Preservation Officer  
Jim Dykmann, Utah State Historic Preservation Office

Exhibit B.2-8



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

December 5, 2000

Ms. Natalie Gochnour  
Utah State Planning Coordinator  
Room 116 State Capitol  
Salt Lake City, UT 84114

SUBJECT: YOUR APPOINTMENT AS CONTACT PERSON FOR THE STATE HISTORIC  
PRESERVATION OFFICER FOR THE PRIVATE FUEL STORAGE, L.L.C.  
PROJECT

Dear Ms. Gochnour:

In his November 1, 2000, letter (which was postmarked November 15, 2000 and which I received November 20, 2000), Governor Michael O. Leavitt informed me that he has retained authority as the State Historic Preservation Officer (SHPO) for the proposed Private Fuel Storage, L.L.C. (PFS) project and that you have been appointed to serve as the SHPO's contact person for this project.

The U.S. Nuclear Regulatory Commission (NRC) staff and the cooperating Federal agencies (the U.S. Department of Interior's Bureau of Land Management and Bureau of Indian Affairs and the Surface Transportation Board) congratulate you on your appointment, and we look forward to working with you in the future.

Prior to your appointment as the PFS project contact person for the Utah SHPO, the NRC staff and cooperating Federal agencies had been interacting with Mr. Jim Dykmann of the staff of the Utah SHPO on matters associated with the State of Utah's participation in the consultation process required by Section 106 of the National Historic Preservation Act.

During the period in which the previously appointed Utah SHPO had authority for the PFS project, several determinations and findings were made, including: determination of the area of potential effect (APE), identification of the historic properties within the APE, identification of consulting parties, and determination of whether the historic sites within the APE are eligible for inclusion on the National Register of Historic Places. Also, the cooperating Federal agencies notified the Advisory Council on Historic Properties that construction and operation of the facilities associated with the proposed PFS project would have an adverse effect on cultural properties within the APE. As a result of this determination, the cooperating Federal agencies met with several of the consulting parties to solicit their views regarding potential mitigation measures. The Utah SHPO declined to meet with the cooperating Federal agencies to discuss recommended eligibility determinations and potential mitigation measures for the sites within the APE. Also, neither the Governor of Utah, the Utah SHPO, nor any other State official responded within 30 days to the NRC staff's letter dated October 6, 2000, requesting concurrence on the recommendations for eligibility (see enclosure). Therefore, the findings and determinations which have been made are considered final (see 36 CFR 800.3(c)(4)). The cooperating Federal agencies have proceeded to the next step in the consultation process. A draft Memorandum of Agreement (Agreement) has been developed and will be circulated to

Exhibit B.2-9

B-35

NUREG-1714

N. Gochmour

-2-

the consulting parties for comment. In view of your recent appointment by Governor Leavitt, a copy of the draft Agreement will be provided to you. We trust that the Utah SHPO has forwarded all previous reports and correspondence related to the proposed PFS project to you.

If you any questions related to the consultation process, please contact Mr. Scott Flanders of the NRC staff at (301) 415-1172.

Sincerely,



Mark S. Delligatti, Senior Project Manager  
Spent Fuel Licensing Section  
Licensing and Inspection Directorate  
Spent Fuel Project Office  
Office of Nuclear Material Safety  
and Safeguards

Docket No. 72-22

Enclosure: 10/06/00 ltr to Utah SHPO

cc: PFS EIS Service List

The Honorable Michael O. Leavitt, Governor of the State of Utah



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

June 22, 2000

Mr. Don Klima, Director  
Office of Planning and Review  
Advisory Council on Historic Preservation  
12136 West Vayaud Avenue  
Room 300  
Lakewood, Colorado 80228

SUBJECT: NOTIFICATION OF IMPACT TO CULTURAL RESOURCES FROM THE  
PROPOSED PRIVATE FUEL STORAGE FACILITY

Dear Mr. Klima:

Private Fuel Storage, L.L.C. (PFS), a limited liability company owned by eight utilities, proposes to construct and operate an independent spent fuel storage installation (ISFSI) on the Reservation of the Skull Valley Band of Goshute Indians. The Reservation is located 27 miles south-southwest of Tooele, Utah. The ISFSI would be located on an 820 acre-site in the northwest corner of the Reservation, approximately 3.5 miles from the tribal village. PFS would use dry storage technology to store as much as 40,000 metric tons of uranium of spent nuclear fuel (SNF).

PFS proposes to transport the SNF to the Reservation by rail. Currently, the closest rail line is 24 miles north of the Reservation. Therefore, to transport the SNF solely by rail, PFS proposes the construction and operation of a rail line from this existing rail line to the proposed site. The proposed rail line would be located along the western edge of Skull Valley and extend from Skunk Ridge (near Low, Utah) to the ISFSI site on the Reservation. The proposed rail line would be 32 miles long and would traverse only land managed by the U.S. Bureau of Land Management (BLM).

The PFS proposal requires approval from four federal agencies: the U.S. Nuclear Regulatory Commission (NRC), the U.S. Bureau of Indian Affairs (BIA), BLM, and the Surface Transportation Board (STB). PFS has requested the following approvals: an NRC license to receive, transfer, and possess the SNF; BIA's approval of a 25-year lease between PFS and the Skull Valley Band; STB's approval for the construction and operation of the proposed rail line; and approval for a right-of-way from the BLM for construction and use of the proposed rail line over public lands. The rail line would traverse land that is managed within the BLM Pony Express Resource Management Plan (RMP). The current Pony Express RMP does not allow for major rights-of-way such as a rail line in this area and would require an amendment to the RMP prior to granting the requested right-of-way.

The NRC, in cooperation with BIA, BLM, and STB, has published a Draft Environmental Impact Statement (DEIS) regarding the PFS proposal. The four Federal agencies are also participating jointly in the Section 106 process and other required consultations. Based on the review documented in the DEIS, the four Federal agencies have determined that the proposed rail line would adversely affect the Hastings Cutoff Trail, a cultural resource that is considered eligible for the National Register of Historic Places. Also, the proposed rail line would affect other resources that have not yet been fully evaluated to determine their cultural significance.

Exhibit B.3-1

D. Klima

- 2 -

Construction and operation of the proposed ISFSI would not affect any cultural resources on the Reservation.

Enclosed for your review is a copy of the DEIS. Cultural resources are discussed in DEIS Sections 3.6, 4.6, 5.6, and 6.6. Through the consultation process, the four Federal agencies will develop a Memorandum of Agreement (MOA) with the Utah State Historic Preservation Officer (SHPO).

Pursuant to the requirements of 36 CFR 800.6(a)(1), the four Federal agencies are notifying the Council of the adverse effect to the Hastings Cutoff Trail and are providing a copy of the DEIS as documentation of their review and findings to date. The four Federal agencies are also providing the DEIS to the Advisory Council on Historic Preservation (the Council) because the proposed action involves the Reservation of the Skull Valley Band of Goshute Indians. The agencies recognize that one of the four criteria considered by the Council in determining whether to enter the consultation process (described in Appendix A to 36 CFR Part 800) is the effect of the proposed action on Indian tribes and Native Hawaiian organizations. Consultation with the Utah SHPO has been initiated. Also, the cooperating agencies have offered Indian tribes and other organizations, that may be concerned with the possible effects of the proposed action on historic properties, an opportunity to participate in the Section 106 consultation process. Pursuant to 36 CFR 800.6(b)(1)(iv), a copy of the executed MOA will be submitted to the Council.

If you have any questions, please contact Scott Flanders (NRC) at (301) 415-1172, Laird Naylor (BLM) at (801) 977-4357, Garry Cantley (BIA) at (602) 379-6750, or Harold McNulty (STB) at (202) 565-1539.

Sincerely,



Mark S. Delligatti, Senior Project Manager  
Spent Fuel Licensing Section  
Licensing and Inspection Directorate  
Spent Fuel Project Office  
Office of Nuclear Material Safety  
and Safeguards

Docket No. 72-22

Enclosure: DEIS

cc w/o encl: Service Lists

**Advisory  
Council On  
Historic  
Preservation**

The Old Post Office Building  
1100 Pennsylvania Avenue, NW, #809  
Washington, DC 20004

Reply to: 12136 West Bayaud Avenue, #330  
Lakewood, Colorado 80226

June 28, 2000

Mr. Mark S. Delligatti  
Senior Project Manager  
Office of Nuclear Material Safety and Safeguards  
Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

RE: *Notification of Impact to Cultural Resources From the Proposed Private Fuel Storage  
Facility on the Reservation of the Skull Valley Band of Goshute Indians*

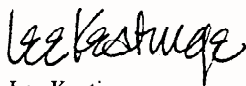
Dear Mr. Delligatti:

On June 27, 2000, we received your notification and supporting documentation regarding the adverse effect of the referenced project on properties eligible for inclusion in the National Register of Historic Places. Based upon the information you provided and the criteria included in Appendix A of our regulations, "Protection of Historic Properties" (36 CFR Part 800), we do not believe that our participation in the consultation to resolve adverse effects is needed. However, should circumstances change and you determine that our participation is required, please notify us.

Pursuant to 36 CFR 800.6(b)(iv), you will need to file the final Memorandum of Agreement (MOA), developed in consultation with the Utah State Historic Preservation Officer (SHPO), and related documentation at the conclusion of the consultation process. The filing of this MOA with the Council is required in order for the NRC to complete its compliance responsibilities under Section 106 of the National Historic Preservation Act.

Thank you for providing us with your notification of adverse effect. If you have any questions, please contact Alan Stanfill at 303/969/5110 or via eMail at [astanfill@achp.gov](mailto:astanfill@achp.gov).

Sincerely,



Lee Keatinge  
Program Analyst  
Western Office of Planning and Review

Exhibit B.3-2



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

November 27, 2000

Mr. Alan Stanfill  
Advisory Council on Historic Preservation  
12136 West Bayaud Avenue, #330  
Lakewood, CO 80226

SUBJECT: SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT FOR THE  
PROPOSED PRIVATE FUEL STORAGE PROJECT

Dear Mr. Stanfill:

As you are aware, Private Fuel Storage, L.L.C. (PFS), proposes to construct and operate an independent spent fuel storage installation on the Reservation of the Skull Valley Band of Goshute Indians, a Federally-recognized Indian Tribe. The U.S. Nuclear Regulatory Commission (NRC), the U.S. Department of Interior's Bureau of Indian Affairs (BIA) and Bureau of Land Management (BLM), and the Surface Transportation Board (STB) have agreed to participate jointly in the consultation process required by Section 106 of the National Historic Preservation Act. By letter dated June 28, 2000, you acknowledged notification and supporting documentation regarding the adverse effect of the project on properties eligible for inclusion on the National Register of Historic Places. Furthermore, you stated that pursuant to 36 CFR 800.6(b)(iv), the cooperating Federal agencies would need to file a final Memorandum of Agreement (Agreement), developed in consultation with the Utah State Historic Preservation Officer (SHPO), and related documentation at the conclusion of the consultation process. This is required in order for the cooperating Federal agencies to fully comply with Section 106 of the National Historic Preservation Act (NHPA).

By letter dated October 6, 2000, the cooperating Federal agencies requested the Utah SHPO's concurrence on the eligibility recommendations and mitigation measures within 30 days (Enclosure 1). During the week of October 23-27, 2000, the cooperating Federal agencies met with consulting parties to discuss the eligibility recommendations contained in the PFS Class III cultural resource inventory report and potential mitigation measures for anticipated adverse impacts to the cultural resources within the area of potential effects (APE). The cooperating Federal agencies scheduled an October 24, 2000, meeting with the previously designated representative of the Utah SHPO's office to discuss the eligibility recommendations and mitigation measures. However, on October 10, 2000, representatives from the SHPO's office canceled the meeting, and on October 13, 2000, Ms. Lynette Lloyd of the SHPO's staff informed Mr. Scott Flanders of the NRC staff that all future consultation activities regarding the PFS project should be conducted with the Utah Governor's office. By letter dated October 19, 2000, the cooperating Federal agencies requested clarification of the SHPO's role in the consultation process (Enclosure 2). On November 20, 2000, I received a letter dated November 1, 2000, from Utah Governor Michael O. Leavitt in which he indicated that, for the PFS project, he was retaining "... the authority of the State Historic Preservation Officer ..." for purposes of consultation under Section 106 of the NHPA (Enclosure 3).

Exhibit B.3-3

A. Stanfill

-2-

Based on the unique circumstances associated with the State's participation in the consultation project, the cooperating Federal agencies request the participation of the Advisory Council on Historic Preservation in the Section 106 consultation process for the PFS proposal.

If you have any further questions or comments regarding this request, please contact Scott Flanders (NRC) at (301) 415-1172, Laird Naylor (BLM) at (801) 977-4357, Garry Cantley (BIA) at (602) 379-6750, or Phillis Johnson Ball (STB) at (202) 565-1530.

Thank you for your consideration.

Sincerely,



Mark S. Delligatti, Senior Project Manager  
Spent Fuel Licensing Section  
Licensing and Inspection Directorate  
Spent Fuel Project Office  
Office of Nuclear Material Safety  
and Safeguards

Docket No. 72-22

Enclosures:

1. 10/06/2000 ltr to UT State Historic Preservation Offc.
2. 10/19/2000 ltr to UT State Historic Preservation Offc.
3. 11/01/2000 ltr fr Governor Michael O. Leavitt

cc: EIS Service List  
Natalie Gochnour

**Advisory  
Council On  
Historic  
Preservation**

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The Old Post Office Building  
1100 Pennsylvania Avenue, NW, #809  
Washington, DC 20004

Reply to: 12136 West Bayaud Avenue, #330  
Lakewood, Colorado 80226

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DEC 18 2000

Mr. Mark S. Delligatti  
Senior Project Manager  
Licensing and Inspection Directorate  
Office of Nuclear Material Safety and Safeguards  
United State Nuclear Regulatory Commission  
Washington, D.C. 20555

REF: *Section 106 of the National Historic Preservation Act for the Proposed Private Fuel  
Storage Project on the Reservation of the Skull Valley Band of Goshute Indians*

Dear Mr. Delligatti:

On December 4, 2000, the Council received the Nuclear Regulatory Commission's notification regarding the proposed private fuel storage project on the reservation of the Skull Valley Band of Goshute Indians, and invitation to participate in consultation to resolve its adverse affects on properties eligible for listing in the National Register of Historic places. In accordance with 36 CFR §800.6(a)(1) of the Council's regulations, "Protection of Historic Properties" (36 CFR Part 800, the Council has concluded that Appendix A, *Criteria for Council Involvement in Reviewing Individual Section 106 Cases*, is met because of the controversy surrounding this project and the potential procedural problems that may be encountered with the reassignment of State Historic Preservation Officer's responsibilities within the Utah Governor's Office. The Council, therefore, will participate in this consultation.

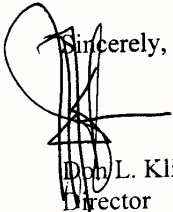
We have also provided written notification, copy enclosed, of the Council's decision to enter the consultation on this project to Chairman Richard Meserve, as required by 36 CFR §800.6(a)(1)(iii).

**Exhibit B.3-4**

2

We look forward to consulting with your agency, and other consulting parties to resolve adverse effects resulting from the Private Fuel Storage Project. Should you have any questions or wish to discuss this matter further, please contact Alan Stanfill at (303) 969-5110, or via e-mail at [astanfill@achp.gov](mailto:astanfill@achp.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Don L. Klima", is written over the word "Sincerely,".

Don L. Klima  
Director  
Office of Planning and Review

Enclosure

**Advisory  
Council On  
Historic  
Preservation**

---

The Old Post Office Building  
1100 Pennsylvania Avenue, NW, #809  
Washington, DC 20004

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DEC 18 2000

Honorable Richard A. Meserve  
Chairman  
Nuclear Regulatory Commission  
Washington, DC 20555

Dear Chairman Meserve:

On December 4, 2000, the Council received the Nuclear Regulatory Commission's notification regarding the proposed private fuel storage project on the reservation of the Skull Valley Band of Goshute Indians, and invitation to participate in consultation to resolve its adverse affects on properties eligible for listing in the National Register of Historic places. In accordance with 36 CFR §800.6(a)(1) of the Council's regulations, "Protection of Historic Properties" (36 CFR Part 800, the Council has concluded that Appendix A, *Criteria for Council Involvement in Reviewing Individual Section 106 Cases*, is met because of the controversy surrounding this project and the potential procedural problems that may be encountered with the reassignment of State Historic Preservation Officer's responsibilities within the Utah Governor's Office. The Council, therefore, will participate in this consultation.

We have also provided written notification, copy enclosed, of the Council's decision to enter the consultation on this project to the Licensing and Inspection Directorate, as required by 36 CFR §800.6(a)(1)(iii).

We look forward to consulting with your agency, and other consulting parties to resolve adverse effects resulting from the Private Fuel Storage Project. Should you have any questions or wish to discuss this matter further, please contact Alan Stanfill at (303) 969-5110, or via e-mail at [astanfill@achp.gov](mailto:astanfill@achp.gov).

Sincerely,



John M. Fowler  
Executive Director

Enclosure

READING

JUL 01 1999

8111/2800  
(UT-023)

Certified Mail #Z 155 815 989  
Return Receipt Requested

Attn: Chairperson  
Northwestern Band of Shoshoni Nation  
Blackfoot, Idaho 83221-0637

Dear Chairperson:

The Bureau of Land Management (BLM) Salt Lake Field Office is considering an application by Private Fuel Storage to construct a railroad line along the west side of Skull Valley to a proposed nuclear storage site on the Goshute Indian Reservation. The proposed railroad would require an amendment to the Pony Express Resource Management Plan to allow a right-of-way outside of a designated corridor. The BLM is cooperating with the Nuclear Regulatory Commission (NRC) and the Bureau of Indian Affairs (BIA) in preparing an environmental impact statement for the proposed project.

If you would like further information about this project, or if you would like to be a consulting party in the process of compliance with the National Historic Preservation Act, please call Archeologist Laird Naylor at (801) 977-4357.

Sincerely,

LEON E. BERGGREN

for

Glenn A. Carpenter  
Field Manager

Exhibit B.4-1



CONFEDERATED TRIBES  
*of the*  
GOSHUTE RESERVATION

P.O. BOX 6104  
IBAPAH, UTAH 84034  
PHONE: (435) 234-1138  
FAX: (435) 234-1162

July 9, 1999

Glenn Carpenter  
Bureau of Land Management  
Salt Lake District Office  
2370 S. 2300 W.  
Salt Lake City, UT 84119

Re: Consultation request for Skull Valley EIS

Dear Mr. Carpenter:

I had received your letter informing us of Skull Valley Band of Goshute's intent to build a railway through Skull Valley. Now, our current informal agreement with Skull Valley delegates them as contact on the consultation process in accordance with NEPA. This agreement has Skull Valley acting as a contact and in turn informing us of the status of consultation and status of EA(s) and EIS(s). We feel now that with the EIS to be conducted for their monitored retrievable storage project that we are to be involved within the consultation process. We feel compelled to review the EIS as this is not only their aboriginal territory but to all Goshute people.

If you wish to contact me feel free to call at the above number or 435/234-1168.

Respectfully,

Milton J. Hooper  
Interim Chair, Goshute Business Council

8111  
(UT-023)

DEC 28 1999

FILE

SURNAME
ZN

SB

Mr. Ronald Wopsock, Chair  
The Ute Indian Tribe  
P.O. Box 190  
Fort Duchense, Utah 84026-0190

Dear Mr. Wopsock: *and others, see attached list*

The archeological survey for the Private Fuel Storage facility and railroad in Skull Valley is now complete. Several historic sites have been located which will be impacted by the railroad. First, on the west side of the valley, is the Hastings Cutoff of the California National Historic Trail. This section of the trail survives as a linear depression with excellent integrity of both the physical feature and the surrounding landscape. Other historic features have been located in Low Pass including an abandoned section of US Highway 40 with multiple alignments, a possible alignment of the Victory/Lincoln Highway, the railroad, a possible telegraph line and a historic telephone line. The railroad, telephone, and possibly also the telegraph lines are also present at the Intermodal Transfer Point. We are in the process of consulting to determine the significance of these features and the most appropriate means of mitigating the impacts of this undertaking.

For the nationally significant Hastings Cutoff, the BLM is tentatively proposing archeological documentation of the entire trail segment across Skull Valley as mitigation. This is appropriate, as the historic landscape of the entire segment will be affected. This segment reaches from the BLM property boundary near Hope Wells on the southeast to Redlum Spring on the west. Proposed documentation would include description of trail characteristics and condition by subsegments of like condition, description of all associated features or artifacts, continuous black-and-white photography, and mapping of the entire segment using the Global Positioning System (GPS).

Please contact Archeologist Laird Naylor at (801) 977-4357 or at the above address if you would like to be a consulting party on this project or if you have any concerns or comments on this process. Topics for which comments are specifically being solicited at this point include recommendations for the proposed mitigation, and assistance in documenting any other historic properties which might be affected by the project.

Sincerely,

*William Dragt*

for Glenn A. Carpenter  
Field Office Manager

Exhibit B.4-3



## UTAH CROSSROADS

OREGON-CALIFORNIA TRAILS ASSOCIATION  
3026 Metropolitan Way  
Salt Lake City, Utah 84109  
(801) 484-9623

January 6, 2000

Glenn A. Carpenter  
Bureau of Land Management  
Salt Lake City Field Office  
2370 South 2300 West  
Salt Lake City, UT 84119

RE: 8111 (UT-023) Jan 03 2000 and 8152 (UT-023) Dec 28 1999.

Dear Mr. Carpenter:

Thank you for keeping us in the loop on these projects. We do have some definite concerns when it comes to disrupting historic sites. We realize that you folks are doing your best to mitigate the situation and appreciate your efforts.

We would like very much to be involved as a consulting party on these projects. We do have concerns and would like to comment on this process.

Please notify the following of any meetings or comment sessions that come up.

Steve Berlin  
Oregon-California Trails Association  
5211 Greenpine Dr.  
Salt Lake City, UT 84123

Albert Mulder  
Oregon-California Trails Association  
6098 South 520 East  
Murray, UT 84107

Roy Tea  
Oregon-California Trails Association  
2881 East Pamela Dr.  
Salt Lake City, UT 84121

Exhibit B.4-4

Vern Gorzitze  
Oregon-California Trails Association  
3026 Metropolitan Way  
Salt Lake City, UT 84109

Jesse Petersen  
Lincoln Highway Association  
56 Benchmark Village  
Tooele, UT 84074

I am sure that the above named people could offer some constructive and informative help, as well as insight, to you study group.

As you mentioned the Hastings Cutoff of the California National Historic Trail, is of great significance and value to our western heritage as are the Lincoln and Victory Highways.

Thank you again for informing us and offering the chance for some input.

Respectfully,

Vern Gorzitze

cc     Laird Naylor  
         Bureau of Land Management  
         Salt Lake Field Office  
         2370 South 2300 West  
         Salt Lake City, UT 84119

STEPHEN L. CARR, M.D.  
2801 E. 5140 SOUTH  
HOLLADAY, UTAH 84117  
(801) 277-7711  
FAX 272-8579

January 28, 2000

Re: 8152 (UT-023) and 8111 (UT-023)

Glenn A. Carpenter  
Field Office Manager  
BLM  
2370 S. 2300 West  
Salt Lake City, Utah 84119

Dear Mr. Carpenter,

The two letters referenced above, addressed to Lester Tippie, President of the Promontory Chapter of the National Railway Historical Society, have been given to me, as railroad historian, to reply.

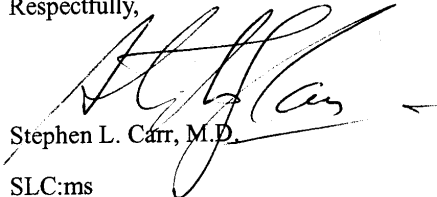
Regarding #8152, we are aware of various encroachments that will occur when the new rail line is constructed. Of necessity, older existing trails, highways, etc., will be breached in one form or other. I suppose you do what you need to to mitigate as much destruction as is possible in such instances. Other than that, this Chapter takes no position on the route or obstacles that may be presented by construction. We will be interested in the final location of the rail line and its usage.

Regarding #8111, the mentioned railroad bed of the Salt Lake & Western RR through 5-mile Pass has been utilized as a ranch road, ORV road, etc., almost since its abandonment as a rail line. It has not suffered any more from such activity than from normal erosion. It is no more historical than any number of other such abandoned grades, possibly just more visible. The Pony Express route and the old telegraph line would be harder to define because of the lack of specific construction and grading.

Again, the Chapter takes no position on whatever must be done to segregate ORV use in the proposed SRMA. We would simply ask that, wherever possible, when the rail grade is used or crossed (the Pony Express and telegraph routes, as well), that your BLM signs be placed to tell the traveler or visitor what the grading, etc., had been used for in the past.

Thanks for your interest in our Chapter's concern in regard to these projects.

Respectfully,



Stephen L. Carr, M.D.

SLC:ms

Exhibit B.4-5



**UNITED STATES  
NUCLEAR REGULATORY COMMISSION**

WASHINGTON, D.C. 20555-0001

April 26, 2000

The Honorable Ronald Wopsock, Chairman  
The Ute Indian Tribe  
P.O. Box 190  
Ft. Duchense, Utah 84026-0190

**SUBJECT: NATIONAL HISTORIC PRESERVATION ACT CONSULTATION PROCESS  
FOR THE PROPOSED PRIVATE FUEL STORAGE FACILITY**

Dear Chairman Wopsock:

By letters dated July 1, and December 28, 1999, the U.S. Bureau of Land Management (BLM) informed you that it is considering an application for a proposed rail line along the western side of Skull Valley. The proposed rail line would start at Skunk Ridge and extend along the eastern side of the Cedar Mountains to a proposed independent spent fuel storage facility (ISFSI) on the Reservation of the Skull Valley Band of Goshute Indians. BLM indicated that the proposed rail line would require an amendment to the BLM Pony Express Resource Management Plan and extended an opportunity for you to be a consulting party in the process of compliance with the National Historic Preservation Act (NHPA). In addition to the amendment to the BLM Pony Express Resource Management Plan, the proposed project (the ISFSI and rail line) would require federal approvals from the U.S. Nuclear Regulatory Commission (NRC), the U.S. Bureau of Indian Affairs (BIA), and the U.S. Surface Transportation Board (STB). Because the agencies' required actions for the construction and operation of the proposed project are related, the agencies agreed to cooperate in the preparation of an environmental impact statement (EIS) for these actions. Similarly, the agencies also agreed to participate jointly in the Section 106 process and other required consultations. NRC, BIA, and STB also would like to extend an opportunity for you to participate as a consulting party in the process of compliance with the NHPA. If you have already expressed your desire to participate in the NHPA consultation process, you need not respond to this letter unless you have decided to no longer participate.

Enclosed is a map which shows the proposed location of the rail line and the ISFSI. Specifically, the areas for the proposed project include:

1. The ISFSI site: 820 acres located in the northwest corner of the reservation in Township 5 South (T5S), Range 8 West (R8W), all of Section 6, and portions of Sections 5, 7, and 8.
2. The utility corridor and access road: 202 acres from the eastern boundary of the ISFSI site to the Skull Valley Road. The utility corridor would be located in T5S, R8W, Sections 7, 8, and 9.
3. Rail Line: Proposed to originate at Skunk Ridge and run along the base of the Cedar Mountains to the ISFSI site. The proposed rail line would be located in T1N, R9W Sections 17, 18, 20, 21, 22, 27, and 34; T1S, R9W Sections 3, 10,

**Exhibit B.4-6**

Chairman Wopsock

- 2 -

April 26, 2000

15, 22, 27, and 34; T2S R9W Sections 3, 10, 15, 22, 27, and 34; T3S, R9W Sections 3, 10, 15, 22, 27, and 34; T4S, R9W Sections 3, 10, 15, 22, 27, and 34; T5S, R9W Sections 1, 2, and 3; and T5S, R8W Section 6.

If you have any questions about the proposed project or would like to participate in the NHPA consultation process for any aspect of the proposed project, please contact Scott Flanders of the NRC at (301) 415-1172; Garry Cantley of the BIA at (602) 379-6750; Laird Naylor of the BLM at (801) 977-4357; or Harold McNulty of the STB (202) 565-1539. Written request to participate as a consulting party can be sent to:

Scott Flanders, Environmental Project Manager  
U.S. Nuclear Regulatory Commission  
Mail Stop O-13D13  
Washington D.C. 20555-0001

Garry Cantley, Archeologist  
U.S. Bureau of Indian Affairs  
Phoenix Area Office  
P.O. Box 10  
Phoenix, AZ 85001

Laird Naylor, Archeologist  
U.S. Bureau of Land Management  
Salt Lake District Office  
2370 South 2300 West  
Salt Lake City, UT 84119

Harold McNulty, Project Manager  
U.S. Surface Transportation Board  
Section of Environmental Analysis  
1925 K Street NW, 5<sup>th</sup> Floor  
Washington, DC 20423

Sincerely,



Mark S. Delligatti, Senior Project Manager  
Spent Fuel Licensing Section  
Licensing and Inspection Directorate  
Spent Fuel Project Office  
Office of Nuclear Material Safety  
and Safeguards

Docket No. 72-22

Enclosure: Map

cc: Service Lists



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

September 13, 2000

Ms. Marjean Bullcreek  
Ohngo Gaudadeh Devia  
P.O. Box 155  
Tooele, UT 84074

SUBJECT: NATIONAL HISTORIC PRESERVATION ACT CONSULTATION PROCESS  
FOR THE PROPOSED PRIVATE FUEL STORAGE FACILITY

Dear Ms. Bullcreek:

As you are aware, Private Fuel Storage, L.L.C. (PFS), a limited liability company owned by eight utilities, proposes to construct and operate an independent spent fuel storage installation (ISFSI) on the Reservation of the Skull Valley Band of Goshute Indians, a Federally-recognized Indian Tribe. PFS would use dry storage technology to store as much as 40,000 metric tons of uranium of spent nuclear fuel (SNF).

PFS proposes to transport the SNF to the Reservation by rail. Currently, the closest rail line is 24 miles north of the Reservation. Therefore, to transport the SNF solely by rail, PFS proposes the construction and operation of a rail line from this existing rail line to the proposed site. The proposed rail line would be located along the western edge of Skull Valley and extend from Skunk Ridge (near Low, Utah) to the ISFSI site on the Reservation. The proposed rail line would be 32 miles long and would traverse only land managed by the U.S. Bureau of Land Management (BLM).

The U.S. Nuclear Regulatory Commission (NRC), in cooperation with the U.S. Bureau of Indian Affairs (BIA), BLM, and the Surface Transportation Board (STB), has published a Draft Environmental Impact Statement (DEIS) regarding the PFS proposal. The cooperating agencies have offered Indian tribes and other organizations, that may be concerned with the possible effects of the proposed action on historic properties, an opportunity to participate in the Section 106 consultation process. This process allows identification of consulting parties, identification of historic properties and assessment of the effects of the proposed action on such properties, and consultation regarding the effects of the proposed action on historic properties with Indian tribes that might attach religious and cultural significance to affected historic properties.

In accordance with 36 CFR 800.2(c)(6), certain individuals and organizations with a demonstrated interest in the undertaking may participate as consulting parties because of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking's effects on historic properties. In order to determine your organization's eligibility to participate in the Section 106 consultation process, we request that you provide information regarding cultural resources that you believe will be affected by the construction and operation of the proposed ISFSI or rail line. Specifically, we are requesting the following information:

- (1) awareness of or concern for any prehistoric or historic district, site, building, structure, or object eligible for inclusion on the National Register of Historic Places, or

Exhibit B.4-7

M. Bullcreek

2

September 13, 2000

(2) awareness of or concern for properties of traditional religious and cultural significance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria as defined in 36 CFR Part 60.

If you have any questions or comments regarding this request, please contact Scott Flanders (NRC) at (301) 415-1172, Laird Naylor (BLM) at (801) 977-4357, Garry Cantley (BIA) at (602) 379-6750, or Phillis Johnson Ball (STB) at (202) 565-1539. A response within 30 days of receipt of this letter is appreciated. Thank you for your assistance.

Sincerely,



Mark S. Delligatti, Senior Project Manager  
Spent Fuel Licensing Section  
Licensing and Inspection Directorate  
Spent Fuel Project Office  
Office of Nuclear Material Safety  
and Safeguards

Docket No. 72-22

cc: M. Evans, State Historic Preservation Officer



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

December 5, 2000

Ms. Margene Bullcreek  
Ohngo Gaudadeh Devia  
P.O. Box 155  
Tooele, UT 84074

SUBJECT: SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT  
CONSULTATION PROCESS FOR THE PROPOSED PRIVATE FUEL  
STORAGE PROJECT

Dear Ms. Bullcreek:

As you are aware, Private Fuel Storage, Limited Liability Company (PFS), proposes to construct and operate an independent spent fuel storage installation (ISFSI) on the Reservation of the Skull Valley Band of Goshute Indians, a Federally recognized Indian Tribe. The U.S. Nuclear Regulatory Commission (NRC), the U.S. Department of Interior's Bureau of Indian Affairs (BIA) and Bureau of Land Management (BLM), and the Surface Transportation Board (STB) agreed to participate jointly in the consultation process required by Section 106 of the National Historic Preservation Act.

By letter dated September 13, 2000, the cooperating Federal agencies requested information from Ohngo Gaudadeh Devia (OGD) on (1) the awareness of, or concern for, any prehistoric or historic district, site, building, structure, or object eligible for inclusion on the National Register of Historic Places, or (2) the awareness of, or concern for, properties of traditional religious and cultural significance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria as defined in 36 CFR Part 60. On October 11, 2000, you contacted Scott Flanders, of the NRC staff, and requested a 2-week extension to file your comments. Mr. Flanders agreed to your request. Upon the passage of three additional weeks, the NRC staff and representatives of the BIA and BLM contacted representatives of OGD and arranged a telephone conference call. This conference call was held on November 9, 2000. Its purpose was to solicit information regarding cultural resources that OGD believes will be affected by the construction and operation of the proposed facility or the rail line in order to determine OGD's eligibility to participate in the consultation process. Enclosure 1 is a summary of the content of the conference call.

We appreciate your organization's contribution to the process by your suggestions, such as considering potential artifacts within the Area of Potential Effect (APE). As discussed during the conference call, a Class III cultural resources inventory was performed on the Reservation and in Skull Valley, Utah. All portions of the APE were included in the study area. At your request, a copy of the Class III cultural resources report documenting the cultural resource inventory is enclosed (Enclosure 2). Site location information contained in the Class III cultural resources report may not be released to the general public under federal law, and it is essential that this information be protected.

Exhibit B.4-8

M. Bullcreek

2

As you will see in the Class III cultural resources report and in the Draft Environmental Impact Statement (Page 4-38), no properties or use of culturally important natural resources of traditional religious and cultural significance to an Indian tribe or Native Hawaiian organization have been identified. The cooperating Federal agencies recognize that unanticipated discovery of cultural properties can occur once construction of the project has begun. Therefore, the cooperating Federal agencies have agreed to include a provision in a Treatment Plan for covering the entire APE, to deal with any unanticipated discovery of cultural properties or culturally important natural resources of traditional religious and cultural significance to a Federally recognized Indian tribe or Native Hawaiian organization.

Notwithstanding the cooperating Federal agencies' determination that the substantive information OGD provided reflected issues that were already being considered as a part of the Section 106 consultation process, the cooperating Federal agencies have agreed that OGD should be included as a consulting party to the Section 106 consultation process.

The cooperating Federal agencies appreciate your forthright statement that you do not believe that you have the expertise to make determinations of cultural resources within the APE and that you would defer to the judgment of elders of the Confederated Tribes of the Goshute Reservation. Please be aware that elders of the Confederated Tribes of the Goshute Reservation have been consulted in this regard and that the Confederated Tribes of the Goshute Reservation have also been granted consulting party status (see Enclosure 3).

If you have any questions or comments regarding this request, please contact Scott Flanders (NRC) at (301) 415-1172, Laird Naylor (BLM) at (801) 977-4357, Garry Cantley (BIA) at (602) 379-6750, or Phillis Johnson Ball (STB) at (202) 565-1530.

Sincerely,



Mark S. Delligatti, Senior Project Manager  
Spent Fuel Licensing Section  
Licensing and Inspection Directorate  
Spent Fuel Project Office  
Office of Nuclear Material Safety  
and Safeguards

Docket No. 72-22

Enclosures:

1. Minutes of the 11/9/00  
Teleconference
2. Class III Cultural Resources  
Inventory Report
3. Ltr dtd 11/20/00 to the  
Confederated Tribes of  
the Goshute Reservation

cc: EIS Service List  
Natalie Gochnour, Utah State  
Planning Coordinator

**MINUTES OF THE NOVEMBER 9, 2000, TELECONFERENCE  
WITH OHNGO GAUDADEH DEVIA  
ON THE NATIONAL HISTORIC PRESERVATION ACT CONSULTATION PROCESS  
FOR THE PROPOSED PRIVATE FUEL STORAGE PROJECT**

**Participants:**

**Name:**

Margene Bullcreek, Principal  
Samuel Shepley, Attorney  
Mark Delligatti, Senior Project Manager  
Scott Flanders, Senior Project Manager  
Melanie Wong, Project Manager  
Laird Naylor, Archeologist  
Steve Simpson, Attorney  
Paul Nickens, Archeologist

**Organization:**

Ohngo Gaudadeh Devia  
Ohngo Gaudadeh Devia  
NRC  
NRC  
NRC  
BLM - Salt Lake Field Office  
BIA  
Pacific Northwest National Laboratory

The teleconference began at 12:00 p.m., EST. Mr. Flanders stated that the purpose of the teleconference was to solicit information regarding cultural resources that Ohngo Gaudadeh Devia (OGD) believes will be affected by the project. This information is solicited to determine whether OGD is eligible to participate in the National Historic Preservation Act consultation process.

By letter dated September 13, 2000, the cooperating Federal agencies had requested information from OGD on (1) the awareness of, or concern for, any prehistoric or historic district, site, building, structure, or object eligible for inclusion on the National Register of Historic Places, or (2) the awareness of, or concern for, properties of traditional religious and cultural significance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria as defined in 36 CFR Part 60. Ms. Bullcreek confirmed that OGD had not responded to the September 13, 2000, letter and had requested an extension of time. Mr. Flanders asked if OGD was now ready to state its position on the cultural resources within the Area of Potential Effect (APE) to be provided to the cooperating Federal agencies. While Ms. Bullcreek noted that the organization was not aware of any historic structures located in the APE, she stated that the project would have irreversible effects. She further stated that she believed that the project could potentially disturb artifacts, cemeteries and campsites, and medicinal plants (e.g., sagebrush and other plants she could not identify at this time). In addition, she stated her belief that the proposed project would impact a sacred underground artesian watercourse involved in ceremonial purification. Ms. Bullcreek also stated that she believed that the air and animals were sacred and that they too would be disturbed. A botanical survey was requested by Ms. Bullcreek.

Mr. Flanders and Mr. Naylor disclosed that a Class III cultural resource inventory of the APE had been performed and that a copy of the report would be forwarded to the organization. Ms. Bullcreek stated that she was not qualified to make such determinations of cultural resources within the APE and that she preferred to defer to the tribal elders, particularly those of the Confederated Tribes of the Goshute Reservation. Mr. Flanders stated that the cooperating Federal agencies had consulted with the Confederated Tribes of Goshute Reservation (specifically with Mr. Ken Williams, Chairman Milton Hooper's appointed representative). Ms. Bullcreek indicated that, in her opinion, Mr. Williams was not an acceptable representative.

Mr. Flanders indicated that the cooperating Federal agencies would consider the information that OGD had provided and decide whether OGD would be granted consultation status.

The teleconference concluded at approximately 12:45 p.m. EST.

Enclosure 1



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

October 16, 2000

The Honorable Elwood Mose, Chairman  
Tribal Council of the Te-Moak  
Western Shoshone Indians of Nevada  
525 Sunset Street  
Elko, Nevada 89801

SUBJECT: REQUEST FOR CONCURRENCE ON ELIGIBILITY DETERMINATIONS FOR  
THE ARCHEOLOGICAL AND HISTORIC SITES IDENTIFIED WITHIN THE  
AREA OF POTENTIAL EFFECT FOR THE PROPOSED PRIVATE FUEL  
STORAGE FACILITY

Dear Chairman Mose:

By letter dated July, 1, 1999, and April 26, 2000, the U.S. Nuclear Regulatory Commission (NRC), the U.S. Bureau of Indian Affairs (BIA), the U.S. Bureau of Land Management (BLM), and the Surface Transportation Board (STB) extended opportunities for you to participate in the National Historic Preservation Act Section 106 consultation process for the Private Fuel Storage facility. During a follow-up call with the NRC on September 25, 2000, you indicated that your tribe would like to participate in the consultation process. As a part of the consultation process, we are providing you with a copy of the Class III cultural resource inventory report prepared by a Private Fuel Storage contractor, P-III Associates (Enclosure 1). The inventory was performed in May and June of 1999 and in June 2000, and the study area covered all portions of the area of potential effect (APE). For all sites within the APE, the report includes a recommendation with regard to each site's eligibility for inclusion in the National Register of Historic Places. We have reviewed the report and concur with the eligibility recommendations for all archeological and historic sites within the APE. Enclosure 2 is a list of sites and their eligibility recommendation. We request your concurrence, within 30 days, on the eligibility recommendations in the report.

As you will see in the report, no properties of traditional religious and cultural significance to an Indian tribe or Native Hawaiian organization have been identified. The Federal agencies are interested in knowing if you have specific knowledge of any properties within the APE that you attach traditional religious and cultural significance to, or awareness of or concern for any prehistoric or historic district, site, building, structure, or object eligible for inclusion on the National Register of Historic Places that is not included in the report. This will assure the property can be appropriately considered in the Section 106 process.

We are meeting with consulting parties to discuss the eligibility recommendations included in the report and potential mitigation measures for anticipated adverse impacts to the cultural resources within the APE. We are scheduled to meet with you on October 23, 2000. It is our understanding that you will be representing the three Councils of the Te-Moak Western Shoshone. After meeting with the consulting parties, we will prepare a treatment plan and Memorandum of Agreement (MOA) for your review and concurrence.

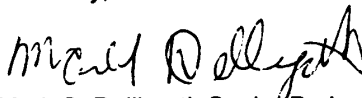
Exhibit B.5-1

Chairman Mose

-2-

We look forward to meeting with you in late October. If you have any questions, please contact Scott Flanders (NRC) at (301) 415-1172, Laird Naylor (BLM) at (801) 977-4357, Garry Cantley (BIA) at (602) 379-6750, or Phillis Johnson-Ball (STB) at (202) 565-1539.

Sincerely,



Mark S. Delligatti, Senior Project Manager  
Spent Fuel Licensing Section  
Licensing and Inspection Directorate  
Spent Fuel Project Office  
Office of Nuclear Material Safety  
and Safeguards

Docket No. 72-22

Enclosures:   1. Class III Cultural Resource Inventory Report  
                  2. List of Sites and Eligibility Recommendations

cc:   Service Lists  
      Max Evans, Utah State Historic Preservation Officer  
      Marvin McDade, Ch., South Fork Band Council  
      Wilbur Woods, Ch., Elko Band Council  
      Helen Dave, Environmental Coordinator  
      Nevada Penoli, Ch., Wells Indian Colony Band Council  
      Lydia Sam, Ch., Battle Mountain Band Council

Eligibility Recommendations for sites within the APE for the proposed PFS Facility

<b><u>Site Number</u></b>	<b><u>Site Name</u></b>	<b><u>NRHP Status</u></b>
42TO709	Emigrant Trail/Hastings Cutoff	Eligible
42TO1187	Rock alignment and cairns	Unevaluated
42TO1343	Buried AT&T telephone line	Not Eligible
42TO1409	U.S. Route 40	Eligible
42TO1410	"New" Victory Highway	Eligible
42TO1411	"Old" Victory Highway	Eligible
42TO1412	Western Union telegraph line	Eligible
42TO1413	Western Pacific Railroad	Eligible
42TO1414	Historic habitation/gas station	Not Eligible
42TO1415	Gas Station	Not Eligible
42TO1416	Road to Deep Creek	Eligible
42TO1417	Road to Sulphur Spring or Eight-Mile Spring	Eligible



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

October 16, 2000

The Honorable Milton J. Hooper, Chairman  
Confederate Tribes of the Goshute Reservation  
P.O. Box 6104  
Ibapah, Utah 84034

SUBJECT: REQUEST FOR CONCURRENCE ON ELIGIBILITY DETERMINATIONS FOR  
THE ARCHEOLOGICAL AND HISTORIC SITES IDENTIFIED WITHIN THE  
AREA OF POTENTIAL EFFECT FOR THE PROPOSED PRIVATE FUEL  
STORAGE FACILITY

Dear Chairman Hooper:

By letter dated July, 9, 1999, you informed the U.S. Bureau of Land Management (BLM) that the Confederate Tribes of the Goshute Reservation would like to participate in the National Historic Preservation Act Section 106 consultation process for the Private Fuel Storage facility. The Nuclear Regulatory Commission (NRC), the Bureau of Indian Affairs (BIA), BLM, and the Surface Transportation Board (STB) are cooperating in the Section 106 consultation process. As a part of the consultation process, we are providing you with a copy of the Class III cultural resource inventory report prepared by a Private Fuel Storage contractor, P-III Associates (Enclosure 1). The inventory was performed in May and June of 1999 and in June 2000, and the study area covered all portions of the area of potential effect (APE). For all sites within the APE, the report includes a recommendation with regard to each site's eligibility for inclusion in the National Register of Historic Places. We have reviewed the report and concur with the eligibility recommendations for all archeological and historic sites within the APE. Enclosure 2 is a list of sites and their eligibility recommendation. We request your concurrence, within 30 days, on the eligibility recommendations in the report.

As you will see in the report, no properties of traditional religious and cultural significance to an Indian tribe or Native Hawaiian organization have been identified. The Federal agencies are interested in knowing if you have specific knowledge of any properties within the APE that you attach traditional religious and cultural significance to, or awareness of or concern for any prehistoric or historic district, site, building, structure, or object eligible for inclusion on the National Register of Historic Places that is not included in the report. This will assure the property can be appropriately considered in the Section 106 process.

We are meeting with consulting parties to discuss the eligibility recommendations included in the report and potential mitigation measures for anticipated adverse impacts to the cultural resources within the APE. We are scheduled to meet with you on October 23, 2000. After meeting with the consulting parties, we will prepare a treatment plan and Memorandum of Agreement (MOA) for your review and concurrence.

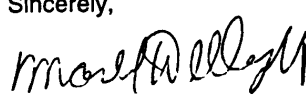
Exhibit B.5-2

Chairman Hooper

-2-

We look forward to meeting with you in late October. If you have any questions, please contact Scott Flanders (NRC) at (301) 415-1172, Laird Naylor (BLM) at (801) 977-4357, Garry Cantley (BIA) at (602) 379-6750, or Phillis Johnson-Ball (STB) at (202) 565-1539.

Sincerely,



Mark S. Delligatti, Senior Project Manager  
Spent Fuel Licensing Section  
Licensing and Inspection Directorate  
Spent Fuel Project Office  
Office of Nuclear Material Safety  
and Safeguards

Docket No. 72-22

Enclosures: 1. Class III Cultural Resource Inventory Report  
2. List of Sites and Eligibility Recommendations

cc: Service Lists  
Max Evans, Utah State Historic Preservation Officer

Eligibility Recommendations for sites within the APE for the proposed PFS Facility

<u>Site Number</u>	<u>Site Name</u>	<u>NRHP Status</u>
42TO709	Emigrant Trail/Hastings Cutoff	Eligible
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42TO1411	"Old" Victory Highway	Eligible
42TO1412	Western Union telegraph line	Eligible
42TO1413	Western Pacific Railroad	Eligible
42TO1414	Historic habitation/gas station	Not Eligible
42TO1415	Gas Station	Not Eligible
42TO1416	Road to Deep Creek	Eligible
42TO1417	Road to Sulphur Spring or Eight-Mile Spring	Eligible

Enclosure 2



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

October 16, 2000

The Honorable Leon D. Bear, Chairman  
Skull Valley Band of Goshute Indians  
2480 South Main, No. 110  
Salt Lake City, UT 84115

SUBJECT: REQUEST FOR CONCURRENCE ON ELIGIBILITY DETERMINATIONS FOR  
THE ARCHEOLOGICAL AND HISTORIC SITES IDENTIFIED WITHIN THE  
AREA OF POTENTIAL EFFECT FOR THE PROPOSED PRIVATE FUEL  
STORAGE FACILITY

Dear Chairman Bear:

As a part of the consultation process, we are providing you with a copy of the Class III cultural resource inventory report prepared by a Private Fuel Storage contractor, P-III Associates (Enclosure 1). The inventory was performed in May and June of 1999 and in June 2000, and the study area covered all portions of the area of potential effect (APE). For all sites within the APE, the report includes a recommendation with regard to each site's eligibility for inclusion in the National Register of Historic Places. We have reviewed the report and concur with the eligibility recommendations for all archeological and historic sites within the APE. Enclosure 2 is a list of sites and their eligibility recommendation. We request your concurrence, within 30 days, on the eligibility recommendations in the report.

As you will see in the report, no properties of traditional religious and cultural significance to an Indian tribe or Native Hawaiian organization have been identified. The Federal agencies are interested in knowing if you have specific knowledge of any properties within the APE that you attach traditional religious and cultural significance to, or awareness of or concern for any prehistoric or historic district, site, building, structure, or object eligible for inclusion on the National Register of Historic Places that is not included in the report. This will assure the property can be appropriately considered in the Section 106 process.

We are meeting with consulting parties to discuss the eligibility recommendations included in the report and potential mitigation measures for anticipated adverse impacts to the cultural resources within the APE. We are scheduled to meet with you on October 25, 2000. After meeting with the consulting parties, we will prepare a treatment plan and Memorandum of Agreement (MOA) for your review and concurrence.

Exhibit B.5-3

Chairman Bear

-2-

We look forward to meeting with you in late October. If you have any questions, please contact Scott Flanders (Nuclear Regulatory Commission ) at (301) 415-1172, Laird Naylor (Bureau of Land Management) at (801) 977-4357, Garry Cantley (Bureau of Indian Affairs) at (602) 379-6750, or Phillis Johnson-Ball (Surface Transportation Board) at (202) 565-1539.

Sincerely,



Mark S. Delligatti, Senior Project Manager  
Spent Fuel Licensing Section  
Licensing and Inspection Directorate  
Spent Fuel Project Office  
Office of Nuclear Material Safety  
and Safeguards

Docket No. 72-22

Enclosures:   1. Class III Cultural Resource Inventory Report  
                  2. List of Sites and Eligibility Recommendations

cc: Service Lists  
      Max Evans, Utah State Historic Preservation Officer

Eligibility Recommendations for sites within the APE for the proposed PFS Facility

<u>Site Number</u>	<u>Site Name</u>	<u>NRHP Status</u>
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42TO1411	"Old" Victory Highway	Eligible
42TO1412	Western Union telegraph line	Eligible
42TO1413	Western Pacific Railroad	Eligible
42TO1414	Historic habitation/gas station	Not Eligible
42TO1415	Gas Station	Not Eligible
42TO1416	Road to Deep Creek	Eligible
42TO1417	Road to Sulphur Spring or Eight-Mile Spring	Eligible

Enclosure 2



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

October 16, 2000

Jay Banta, President  
The Lincoln Highway Association  
Utah Chapter  
PO Box 568  
Dugway, Utah 84022

SUBJECT: REQUEST FOR CONCURRENCE ON ELIGIBILITY DETERMINATIONS FOR  
THE ARCHEOLOGICAL AND HISTORIC SITES IDENTIFIED WITHIN THE  
AREA OF POTENTIAL EFFECT FOR THE PROPOSED PRIVATE FUEL  
STORAGE FACILITY

Dear Mr. Banta:

In May and June of 1999 and in June 2000, a Private Fuel Storage (PFS) contractor, P-III Associates, performed a Class III cultural resources inventory of the area of potential effect (APE) in Skull Valley, Utah. All portions of the APE were included in the study area. At the request of the Bureau of Land Management (BLM), PFS will provide you with a copy of the report documenting the cultural resource inventory. For all sites within the APE, the report includes a recommendation with regard to each site's eligibility for inclusion in the National Register of Historic Places. The Federal agencies, the Nuclear Regulatory Commission (NRC), the BLM, the Bureau of Indian Affairs (BIA), and the Surface Transportation Board (STB), have reviewed the report and concur with the eligibility recommendations for all archeological and historic sites within the APE. Enclosed is a list of sites and their eligibility recommendation. The Federal agencies request your concurrence, within 30 days, on the eligibility recommendations in the report.

We are meeting with consulting parties to discuss the eligibility recommendations included in the report and potential mitigation measures for anticipated adverse impacts to the cultural resources within the APE. A meeting was held with the Utah Trails Organizations on July 27, 2000. During that meeting, several members of the Utah Trails Organizations provided input on possible mitigation measures for the areas adversely impacted by the PFS proposal. However, if after reviewing this report, you have additional information you would like to provide, please contact one of the four Federal agencies. After meeting with the consulting parties, we will prepare a treatment plan and Memorandum of Agreement (MOA) for your review and concurrence.

Exhibit B.5-4

J. Banta

-2-

If you have any questions, please contact Scott Flanders (NRC) at (301) 415-1172, Laird Naylor (BLM) at (801) 977-4357, Garry Cantley (BIA) at (602) 379-6750, or Phillis Johnson-Ball (STB) at (202) 565-1539.

Sincerely,



Mark S. Delligatti, Senior Project Manager  
Spent Fuel Licensing Section  
Licensing and Inspection Directorate  
Spent Fuel Project Office  
Office of Nuclear Material Safety  
and Safeguards

Docket No. 72-22

Enclosure: List of Sites and Eligibility Recommendations

cc: Service Lists

Max Evans, Utah State Historic Preservation Officer

Eligibility Recommendations for sites within the APE for the proposed PFS Facility

<u>Site Number</u>	<u>Site Name</u>	<u>NRHP Status</u>
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42TO1417	Road to Sulphur Spring or Eight-Mile Spring	Eligible

Enclosure 2



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

October 16, 2000

Jere Krakow, Superintendent  
National Park Service  
Long Distance Trails Office  
324 South State Street  
Suite 250, PO Box 45155  
Salt Lake City, Utah 84145-0155

SUBJECT: REQUEST FOR CONCURRENCE ON ELIGIBILITY DETERMINATIONS FOR  
THE ARCHEOLOGICAL AND HISTORIC SITES IDENTIFIED WITHIN THE  
AREA OF POTENTIAL EFFECT FOR THE PROPOSED PRIVATE FUEL  
STORAGE FACILITY

Dear Mr. Krakow:

In May and June of 1999 and in June 2000, a Private Fuel Storage (PFS) contractor, P-III Associates, performed a Class III cultural resources inventory of the PFS area of potential effect (APE) in Skull Valley, Utah. All portions of the APE were included in the study area. At the request of the Bureau of Land Management (BLM), PFS will provide you with a copy of the report documenting the cultural resource inventory. For all sites within the APE, the report includes a recommendation with regard to each site's eligibility for inclusion in the National Register of Historic Places. The Federal agencies, the Nuclear Regulatory Commission (NRC), the BLM, the Bureau of Indian Affairs (BIA), and the Surface Transportation Board (STB), have reviewed the report and concur with the eligibility recommendations for all archeological and historic sites within the APE. Enclosed is a list of sites and their eligibility recommendation. The Federal agencies request your concurrence, within 30 days, on the eligibility recommendations in the report.

We are meeting with consulting parties to discuss the eligibility recommendations included in the report and potential mitigation measures for anticipated adverse impacts to the cultural resources within the APE. A meeting was held with the Utah Trails Organizations on July 27, 2000. During that meeting, you provided input on possible mitigation measures for the areas adversely impacted by the PFS proposal. However, if after reviewing this report, you have additional information you would like to provide, please contact one of the four Federal agencies. After meeting with the consulting parties, we will prepare a treatment plan and Memorandum of Agreement (MOA) for your review and concurrence.

Exhibit B.5-5

J. Krakow

-2-

If you have any questions, please contact Scott Flanders (NRC) at (301) 415-1172, Laird Naylor (BLM) at (801) 977-4357, Garry Cantley (BIA) at (602) 379-6750, or Phillis Johnson-Ball (STB) at (202) 565-1539.

Sincerely,



Mark S. Delligatti, Senior Project Manager  
Spent Fuel Licensing Section  
Licensing and Inspection Directorate  
Spent Fuel Project Office  
Office of Nuclear Material Safety  
and Safeguards

Docket No. 72-22

Enclosure: List of Sites and Eligibility Recommendations

cc: Service Lists  
Max Evans, Utah State Historic Preservation Officer

Eligibility Recommendations for sites within the APE for the proposed PFS Facility

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Enclosure 2



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

October 16, 2000

Richard Poulsen  
Iosepa Historical Society  
West Valley UT Branch 01  
4416 Bordeaux  
West Valley, Utah 84120

SUBJECT: NATIONAL HISTORIC PRESERVATION ACT CONSULTATION PROCESS  
FOR THE PROPOSED PRIVATE FUEL STORAGE FACILITY

Dear Mr. Poulsen:

By letters dated July 1, 1999, and April 26, 2000, the Nuclear Regulatory Commission (NRC), the Bureau of Indian Affairs (BIA), the Bureau of Land Management (BLM), and the Surface Transportation Board (STB) informed you of the Private Fuel Storage, L.L.C. (PFS) proposal that includes the construction and operation of an independent spent fuel storage installation (ISFSI) on the Reservation of the Skull Valley Band of Goshute Indians, and the construction and operation of a rail line from the existing rail line to the proposed site. The proposed rail line would be located along the western edge of Skull Valley and extend from Skunk Ridge (near Low, Utah) to the ISFSI site on the Reservation. In the letters, the Federal agencies also offered you an opportunity to participate in the National Historic Preservation Act Section 106 consultation process.

Although you have informed Laird Naylor of the BLM that you do not want to participate as a consulting party in the Section 106 process, the Federal agencies are interested in knowing if you have specific knowledge of any prehistoric or historic district, site, building, structure, or object eligible for inclusion on the National Register of Historic Places, or awareness of or concern for properties of traditional religious and cultural significance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria as defined in 36 CFR Part 60.

If you have any questions or comments regarding this request, please contact Scott Flanders (NRC) at (301) 415-1172, Laird Naylor (BLM) at (801) 977-4357, Garry Cantley (BIA)

Exhibit B.5-6

R. Poulsen

-2-

at (602) 379-6750, or Phillis Johnson Ball (STB) at (202) 565-1539. A response within 30 days of receipt of this letter is appreciated. Thank you for your assistance.

Sincerely,



Mark S. Delligatti, Senior Project Manager  
Spent Fuel Licensing Section  
Licensing and Inspection Directorate  
Spent Fuel Project Office  
Office of Nuclear Material Safety  
and Safeguards

Docket No. 72-22

cc: M. Evans, State Historic Preservation Officer



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

October 16, 2000

The Honorable Ronald Wopsock, Chairman  
Northern Ute  
P.O. Box 190  
Ft. Duchesne, Utah 84026-0190

SUBJECT: NATIONAL HISTORIC PRESERVATION ACT CONSULTATION PROCESS  
FOR THE PROPOSED PRIVATE FUEL STORAGE FACILITY

Dear Chairman Wopsock:

By letters dated July 1, 1999, and April 26, 2000, the Nuclear Regulatory Commission (NRC), the Bureau of Indian Affairs (BIA), the Bureau of Land Management (BLM), and the Surface Transportation Board (STB) informed you of the Private Fuel Storage, L.L.C. (PFS) proposal that includes the construction and operation of an independent spent fuel storage installation (ISFSI) on the Reservation of the Skull Valley Band of Goshute Indians, and the construction and operation of a rail line from the existing rail line to the proposed site. The proposed rail line would be located along the western edge of Skull Valley and extend from Skunk Ridge (near Low, Utah) to the ISFSI site on the Reservation. In the letters, the Federal agencies also offered you an opportunity to participate in the National Historic Preservation Act Section 106 consultation process.

Although you have not indicated whether you want to participate as a consulting party in the Section 106 process, the Federal agencies are interested in knowing if you have specific knowledge of any prehistoric or historic district, site, building, structure, or object eligible for inclusion on the National Register of Historic Places, or awareness of or concern for properties of traditional religious and cultural significance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria as defined in 36 CFR Part 60.

If you have any questions or comments regarding this request, please contact Scott Flanders (NRC) at (301) 415-1172, Laird Naylor (BLM) at (801) 977-4357, Garry Cantley (BIA)

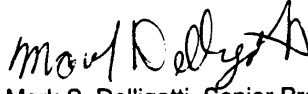
Exhibit B.5-7

Chairman Wopsock

-2-

at (602) 379-6750, or Phillis Johnson Ball (STB) at (202) 565-1539. A response within 30 days of receipt of this letter is appreciated. Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark S. Delligatti".

Mark S. Delligatti, Senior Project Manager  
Spent Fuel Licensing Section  
Licensing and Inspection Directorate  
Spent Fuel Project Office  
Office of Nuclear Material Safety  
and Safeguards

Docket No. 72-22

cc: M. Evans, State Historic Preservation Officer

October 25, 2000

Mark S. Delligatti, Senior Project Manager  
Spent Fuel Licensing Section  
Licensing and Inspection Directorate  
Office of Nuclear Safety and Safeguards

Dear Mr. Delligatti:

This letter is to inform you that the Utah State Chapter of the Lincoln Highway Association does concur with the findings of eligibility for the National Register of Historic Places for sites 42T01410 and 42T01411 in conjunction with the cultural resources review for the Private Fuels Storage railline.

I would, however, offer the following argument that site 42T01410 is eligible under both criterion A and criterion B in regard to the significance statement used for eligibility determinations. I believe that P-III either failed to assess the background information required to make this determination or perhaps, failed to recognize that there were several individuals associated the "New" Victory Highway who are significant at either the state or national level.

You may be aware that the construction of this highway was bitterly opposed by the Lincoln Highway Association as being far too expensive when some improvement of the existing route in primary use at that time (of course the Lincoln Highway) could result in a nearly all season route for far less capital investment. This battle was fought by several of the Directors of the Lincoln Highway Association, many of whom were some of the most important individuals in the expansion of automobile travel and touring in American history. Among those directly involved in lobbying at both the state and national level against the construction of this road were: J. Newton Gunn, Vice President of the U. S. Rubber Company; Frank Sieberling, President of the Goodyear Tire and Rubber Co.; Henry Joy, President of the Packard Motorcar Company.

The acrimonious debate eventually resulted in an hearing with then U.S. Secretary of Agriculture Henry C. Wallace in Washington D.C. Included at this meeting, were the following players, many of whom are certainly "heavyweights" from a state or national viewpoint. Nevada Senator Oddie, Senator King of Utah, Utah Governor Charles Mabey and ex-governor Spry.

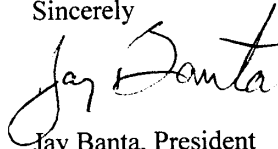
The ultimate outcome of this hearing was, of course, that the route for the Victory Highway was to become the focus of Federal funding for the major roadway to cross western Utah at that time.

I believe that this debate was a final kink in the less-than-positive relationship between the Lincoln Highway Association and Utah politicians and highway officials. After this point, up until it ceased activity in 1928, the Lincoln Highway Association spent very little effort on the Utah portion of the Lincoln Highway.

**Exhibit B.5-8**

I would certainly entertain a rebuttal of this argument should you reached the opinion that this property is not eligible under criterion B. I do believe that being found eligible under multiple criteria becomes significant if, and when, any nominations are forwarded for action.

Sincerely

A handwritten signature in black ink that reads "Jay Banta". The signature is fluid and cursive, with the first name "Jay" and last name "Banta" clearly legible.

Jay Banta, President  
Utah State Chapter  
Lincoln Highway Association

cc: Jess Petersen, President Lincoln Highway Association



Jesse G. Petersen, President  
56 Bench Mark Village  
Tooele, Utah 84074

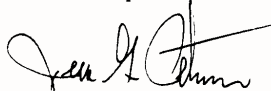
Mark S. Delligatti, Senior Project Manager  
Spent Fuel Licensing Section  
Office of Nuclear Material Safety

October 31, 2000

Dear Mr. Delligatti:

The purpose of this letter is to advise your office that I do concur with the eligibility determinations that were indicated in Enclosure 2 of your letter dated October 16, 2000.

However, I would also like to put it into the record that I submit this concurrence with the utmost reluctance. I do this based not on the merits of the individual sites within the APE, but on the overall impact that the construction of a railroad will have on Skull Valley as a whole.

  
Jesse G. Petersen

NEW YORK TO SAN FRANCISCO—RAILROAD 3181 MILES; LINCOLN HIGHWAY 3384 MILES; TELEPHONE 3370 MILES

Exhibit B.5-9



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

November 7, 2000

Mr. John D. Parkyn  
Chairman of the Board  
Private Fuel Storage, L.L.C.  
P.O. Box C4010  
La Crosse, WI 54602-4010

SUBJECT: REQUEST FOR ADDITIONAL INFORMATION FOR SECTION 106 OF THE  
NATIONAL HISTORIC PRESERVATION ACT (TAC NO. L22462)

Dear Mr. Parkyn:

By application dated June 20, 1997, as supplemented, Private Fuel Storage, L.L.C. (PFS) requested a license to receive, transfer, and possess nuclear power reactor spent fuel and other radioactive material associated with spent nuclear fuel (SNF) storage in an independent spent fuel storage facility (ISFSI) on the Reservation of the Skull Valley Band of Goshute Indians. PFS proposes to transport the SNF to the Reservation by rail. Currently, the closest rail line is 24 miles north of the Reservation. Therefore, to transport the SNF solely by rail, PFS proposes the construction and operation of a rail line from this existing rail line to the proposed site. The proposed rail line would be located along the western edge of Skull Valley and extend from Skunk Ridge (near Low, Utah) to the ISFSI site on the Reservation. The proposed rail line would be 32 miles long and would traverse only land managed by the U.S. Department of Interior's Bureau of Land Management (BLM).

The U.S. Nuclear Regulatory Commission (NRC), in cooperation with the U.S. Department of Interior's Bureau of Indian Affairs (BIA), BLM, and the Surface Transportation Board (STB), has published a Draft Environmental Impact Statement (DEIS) regarding the PFS proposal. To gain efficiencies, the Federal agencies have also agreed to participate jointly in Section 106 of the National Historic Preservation Act. Section 106 requires the Federal agencies to take into account the effects of PFS project on historic properties.

In May and June of 1999 and in June 2000, a PFS contractor, P-III Associates, performed a Class III cultural resources inventory to identify historic properties in Skull Valley, Utah. For each site within the Area of Potential Effects (APE), the report included eligibility recommendations for inclusion in the National Register of Historic Places. One site, 42TO1187, (rock alignment and cairn) was unevaluated for eligibility.

Enclosed is a request for additional information (RAI) about Site 42TO1187 which is needed by the NRC staff and the cooperating agencies to complete the final review of the cultural resources in Skull Valley. We will expect your reply within 30 days of your receipt of this letter.

Exhibit B.5-10

J. Parkyn

2

Please contact Scott Flanders at (301) 415-1172 if you wish to schedule a public meeting on the RAI or to discuss any questions you may have about this letter or the enclosed RAI. Please reference TAC No. L22462 and Docket No. 72-22 in future correspondence related to this request.

Sincerely,



Mark S. Delligatti, Senior Project Manager  
Spent Fuel Licensing Section  
Licensing and Inspection Directorate  
Spent Fuel Project Office  
Office of Nuclear Material Safety  
and Safeguards

Docket No. 72-22  
TAC No. L22462

Enclosure: Request for Additional Information

cc w/enclosure: EIS Service List

**REQUEST FOR ADDITIONAL INFORMATION FOR SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT, DOCKET NO. 72-22**

Pursuant to 36 CFR 800.1, Section 106 of the National Historic Preservation Act, Federal agencies are required to take into account the effects of their undertakings on historic properties. The U.S. Nuclear Regulatory Commission (NRC), in cooperation with the U.S. Department of Interior's Bureau of Land Management (BLM) and Bureau of Indian Affairs (BIA), and the Surface Transportation Board (STB) has determined that additional information is needed to evaluate the effect of the Private Fuel Storage Facility on the historic properties within Skull Valley, Utah.

1. Evaluate site 42TO1187 (rock alignment and cairn) to determine its potential eligibility for the National Register of Historic Places. Below is a list of activities the Federal agencies recommend be taken in evaluating the site. The activities should be sequentially conducted in the order they are listed. If any activity leads to a clear determination of the site's origin, function, age and cultural affiliation so that a statement of National Register eligibility can be recommended, the remaining activities do not have to be conducted.

**A. Non-intrusive testing**

Conduct a metal detector survey to determine the presence or absence of metal artifacts within the defined site boundary.

**B. Records Search**

1. Conduct a site file search for similar previously recorded archeological feature sites in the region that may have similar characteristics.
2. Conduct a search of homestead records for the Skull Valley vicinity.
3. Conduct a review of the history of sheep herding activities in the area, including, if possible, interviews with persons who may have been engaged in those activities in this area.

**C. Tribal Consultation**

Use a qualified Cultural Anthropologist to conduct interviews of tribal elders or other knowledgeable members from regional Federally-recognized Indian tribes to determine if this site or similar examples may have cultural value for tribes. The following tribes should be interviewed: Skull Valley Band of Goshute Indians, Confederated Tribes of Goshute Reservation, Tribal Council of the Te-Moak Western Shoshoni Indians of Nevada, Northwestern Band of Shoshone Nation, Northern Ute, and Paiute Indian Tribe of Utah.

**D. Subsurface Testing**

If completion of either Activities A, B, or C fails to provide sufficient information to determine the site's purpose, origin, and potential eligibility for the National Register of Historic Places, then subsurface testing will be performed. The scope of the testing effort

will be governed by standard stipulations outlined in the permittee's BLM Cultural Resources Use Permit.

P-III Associates did not evaluate site 42TO1187 when it performed a Class III cultural resources inventory to identify historic properties in Skull Valley, Utah.

2. Provide a precise scaled map of site 42TO1187 that clearly delineates the site's boundaries in relationship to the proposed rail centerline and right-of-way boundaries. This map is needed to complete the staff's review.



IN REPLY REFER TO:

## United States Department of the Interior

NATIONAL PARK SERVICE  
CALIFORNIA, MORMON PIONEER, OREGON & PONY EXPRESS NATIONAL HISTORIC TRAILS  
Long Distance Trails Office  
324 South State Street, Suite 250  
Post Office Box 45155  
Salt Lake City, Utah 84145-0155

November 10, 2000

Mark S. Delligatti  
Spent Fuel Licensing Section  
Licensing and Inspection Directorate  
Spent Fuel Project Office  
Office of Nuclear Material Safety and Safeguards  
Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Dear Mr. Delligatti:

Thank you for the opportunity to comment on the inventory of archeological and historic sites identified in the project area of the nuclear storage area and the proposed railroad in Skull Valley Utah.

Our review of the sites related to the California National Historic Trail concurs with your recommendation that the sites are determined eligible for the National Register of Historic Places. One concern remains however, and that is the historic landscape. That aspect was not examined in the inventory, nor given recognition in the assessment. The historic landscape of Skull Valley is a significant and critical element of the Hastings Cutoff Route of the California National Historic Trail. The resources of the historic trail are an ensemble of elements that include the landscape. We believe such to be a key element to the National Register determination.

*The Comprehensive Management and Use Plan, Environmental Impact Statement, California National Historic Trail*, (1999) identified, as required, "high potential sites" and "high potential segments" of the trail. One such segment identified in the management plan is that which crosses Skull Valley, and in the nuclear storage project area. It is a section of trail not only historically significant, but meets the criteria of the National Trail System Act (1968, amended 1978) for "high potential segments." The historic landscape is a key item of the criteria.

One notable absence in the documents listed in the bibliography of the report was the trail management plan noted above. It would have provided key information related to the concerns expressed.

**Exhibit B.5-11**

If you have questions, please contact me at (801) 539-4095.

Sincerely,

A handwritten signature in black ink, appearing to read "Jere L. Krakow". The signature is fluid and cursive, with the first name "Jere" being more prominent.

Jere L. Krakow  
Superintendent

Cc: Laird Naylor, Salt Lake District Office, Bureau of Land Management  
George Ivory, Chairman, Utah Historic Trails Consortium



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

November 20, 2000

The Honorable Milton J. Hooper, Chairman  
Confederated Tribes of the Goshute Reservation  
P.O. Box 6104  
Ibapah, UT 84034

SUBJECT: SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT  
CONSULTATION PROCESS FOR THE PROPOSED PRIVATE FUEL  
STORAGE PROJECT

Dear Chairman Hooper:

On October 23, 2000, the representatives of the U.S. Nuclear Regulatory Commission (NRC), the U.S. Department of Interior's Bureau of Indian Affairs (BIA) and Bureau of Land Management (BLM), and the Surface Transportation Board (STB) met with your representative, Mr. Ken Williams, with regards to the consultation process required under Section 106 of the National Historic Preservation Act as it applies to the Private Fuel Storage, L.L.C. (PFS) project. Pursuant to Title 36 of the U.S. Code of Federal Regulations Part 800 (36 CFR Part 800), the purpose of this consultation process is to provide the Confederated Tribes of the Goshute Reservation the opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its view on the project's effects on such properties, and participate in the resolution of adverse effects.

The meeting focused on the eligibility recommendations included in the Class III cultural resource inventory report and potential mitigation measures for anticipated adverse impacts to the cultural resources within the area of potential effects (APE). We also solicited information regarding cultural resources that the Confederated Tribes of the Goshute Reservation believe will be affected by the PFS project. Although Mr. Williams indicated he was not aware of any properties of cultural and traditional significance within the APE, he stated that he would discuss the project, the report, and the potential mitigation measures with the tribal Elders.

On November 14, 2000, Ms. Melanie Wong of NRC contacted Mr. Williams to discuss the tribal elders' review of the project. This is a follow-up letter confirming the information provided in the telephone conversation. Mr. Williams informed Ms. Wong that based on discussions with the tribal Elders (Mabel Salazar and Orlena McCurby), there were no properties of cultural and traditional significance to the Confederated Tribes of the Goshute Reservation within the APE. If your understanding of the telecon between Ms. Wong and Mr. Williams differs from the above, please notify us as soon as possible.

Exhibit B.5-12

M. Hooper

-2-

November 20, 2000

If you have any further questions or comments regarding this request, please contact Scott Flanders (NRC) at (301) 415-1172, Laird Naylor (BLM) at (801) 977-4357, Garry Cantley (BIA) at (602) 379-6750, or Phillis Johnson Ball (STB) at (202) 565-1539.

Thank you for your assistance in helping us identify cultural resources within the APE.

Sincerely,



Mark S. Delligatti, Senior Project Manager  
Spent Fuel Licensing Section  
Licensing and Inspection Directorate  
Spent Fuel Project Office  
Office of Nuclear Material Safety  
and Safeguards

Docket No. 72-22

cc: EIS Service List



**UNITED STATES  
NUCLEAR REGULATORY COMMISSION**

WASHINGTON, D.C. 20555-0001

December 1, 2000

The Honorable Leon D. Bear, Chairman  
Skull Valley Band of Goshute Indians  
2480 South Main, No. 110  
Salt Lake City, UT 84115

**SUBJECT: REQUEST FOR CONCURRENCE ON DETERMINATION OF ADVERSE  
EFFECTS FOR THE ARCHEOLOGICAL AND HISTORIC SITES IDENTIFIED  
WITHIN THE AREA OF POTENTIAL EFFECTS AND DRAFT MEMORANDUM  
OF AGREEMENT FOR THE PROPOSED PRIVATE FUEL STORAGE FACILITY**

Dear Chairman Bear:

As you are aware, Private Fuel Storage, Limited Liability Company (PFS) proposes to construct and operate an independent spent fuel storage installation (ISFSI) on the Reservation of the Skull Valley Band of Goshute Indians. The U.S. Nuclear Regulatory Commission (NRC), in cooperation with the U.S. Department of Interior's Bureau of Indian Affairs (BIA) and Bureau of Land Management (BLM), and the Surface Transportation Board (STB) have offered Federally recognized Indian tribes and other organizations that may be concerned with the possible effects of the project on historic properties an opportunity to participate in the consultation process required by Section 106 of the National Historic Preservation Act.

In May and June of 1999 and in June 2000, a PFS contractor, P-III Associates, performed a Class III cultural resources inventory in Skull Valley, Utah. All portions of the Area of Potential Effect (APE) were included in the study area. PFS provided consulting parties with a copy of the report documenting the cultural resources located within the APE. For all sites within the APE, the report includes a recommendation with regard to each site's eligibility for inclusion in the National Register of Historic Places.

The cooperating Federal agencies reviewed the cultural resources inventory report and concur with the eligibility determinations. Furthermore, we requested the consulting parties' concurrence on these eligibility determinations. Also, during the week of October 23-27, 2000, the cooperating Federal agencies met with representatives of the consulting parties to discuss the eligibility recommendations included in the report and potential mitigation measures for anticipated adverse impacts to the cultural resources within the APE. Based on these meetings, a consensus determination of eligibility on historic properties has been reached. Enclosure 1 is a list of the eligible sites, sites that are not eligible, and the criteria for determining if a site qualifies for inclusion in the National Register of Historic Places.

Pursuant to 36 CFR 800.5, an adverse effect is found when a project may alter, directly or indirectly, any of the characteristics of a historic property that qualifies the property for inclusion in the National Register of Historic Places in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling or association. Based on these criteria, the cooperating Federal agencies have determined that the proposed project will have adverse effects on properties that are eligible for inclusion in the National Register of Historic Places.

**Exhibit B.6-13**

Chairman Bear

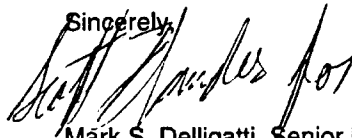
-2-

December 1, 2000

As a consequence of the finding of adverse effect, a draft Memorandum of Agreement (Agreement) has been developed that outlines agreed-upon measures that PFS will take to avoid, minimize, or mitigate these adverse effects (Enclosure 2). The cooperating Federal agencies request your concurrence on the determination of adverse effects and comments regarding the draft Agreement within 30 days.

If you have any questions, please contact Scott Flanders (NRC) at (301) 415-1172, Laird Naylor (BLM) at (801) 977-4357, Garry Cantley (BIA) at (602) 379-6750, or Phillis Johnson-Ball (STB) at (202) 565-1530.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark S. Delligatti", with a stylized flourish at the end.

Mark S. Delligatti, Senior Project Manager  
Spent Fuel Licensing Section  
Licensing and Inspection Directorate  
Spent Fuel Project Office  
Office of Nuclear Material Safety  
and Safeguards

Docket No. 72-22

Enclosure: 1. List of Eligible and Non-Eligible Sites  
2. Draft Memorandum of Agreement

cc: PFS Service Lists  
Natalie Gochnour, State Planning Coordinator

### **CULTURAL RESOURCES INVENTORY**

#### **I. Sites eligible for inclusion in the National Register of Historic Places.**

<b><u>Site Number</u></b>	<b><u>Site Name</u></b>	<b><u>Criteria</u></b>	<b><u>Effect</u></b>
42TO709	Emigrant Trail/Hastings Cutoff	A, B	Adverse
42TO1409	U.S. Route 40	A	Adverse
42TO1410	"New" Victory Highway	A, B, C	Adverse
42TO1411	"Old" Victory Highway	A	Adverse
42TO1412	Western Union telegraph line	A	Adverse
42TO1413	Western Pacific Railroad	A, C	Adverse
42TO1416	Road to Deep Creek	A, B	Adverse
42TO1417	Road to Sulphur Spring or Eight-Mile Spring	A	Adverse

#### **II. Sites not eligible for inclusion in the National Register of Historic Places.**

<b><u>Site Number</u></b>	<b><u>Site Name</u></b>
42TO1414	Historic habitation/gas station
42TO1415	Gas Station
42TO1343	Buried AT&T telephone line

#### **III. Sites not evaluated for inclusion in the National Register of Historic Places.**

<b><u>Site Number</u></b>	<b><u>Site Name</u></b>
42TO1187	Rock alignment and cairns

Enclosure 1

JOHN PAUL KENNEDY, P.C.  
ATTORNEY AT LAW  
1385 YALE AVENUE  
SALT LAKE CITY, UTAH 84105  
TELEPHONE (801) 583-6170  
TELEFAX (801) 581-1007

December 8, 2000

Mark S. Delligatti  
Spent Fuel Licensing Section  
Spent Fuel Project Office  
Office of NMSS  
Nuclear Regulator Commission  
Washington, D.C. 20555-0001

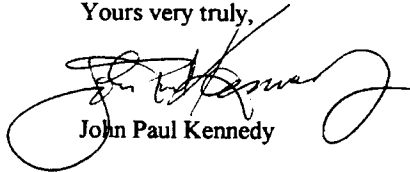
Re: Request for Concurrence

Dear Mr. Delligatti:

I represent the Confederated Tribes of the Goshute Reservation. They do not consent to your request for concurrence on determination of adverse effects or the draft memo of agreement.

The Goshute Tribe at Ibapah believes that the spent fuel waste storage project will so change the character of the area in appearance, perception, and use that it cannot exist without doing irreparable damage to the area. For these reasons and all of the others previously cited to the NRC, the BIA, and others, the Goshute Tribe continues to object to the proposed project as a desecration to its aboriginal area and the important sites located there.

Yours very truly,



John Paul Kennedy

**Exhibit B.5-14**



**UNITED STATES  
NUCLEAR REGULATORY COMMISSION**  
WASHINGTON, D.C. 20555-0001

December 12, 2000

Mr. John D. Parkyn  
Chairman of the Board  
Private Fuel Storage, L.L.C.  
P.O. Box C4010  
La Crosse, WI 54602-4010

**SUBJECT: PROPOSED MITIGATION MEASURES DEVELOPED DURING THE  
CONSULTATION PROCESS REQUIRED FOR SECTION 106 OF THE  
NATIONAL HISTORIC PRESERVATION ACT (TAC NO. L22462)**

Dear Mr. Parkyn:

By application dated June 20, 1997, as supplemented, Private Fuel Storage L.L.C. (PFS) requested a license to receive, transfer, and possess nuclear power reactor spent fuel and other radioactive material associated with spent nuclear fuel (SNF) storage in an independent spent fuel storage installation (ISFSI) on the Reservation of the Skull Valley Band of Goshute Indians. PFS proposes to transport the SNF to the Reservation by rail. Currently, the closest rail line is 24 miles north of the Reservation. Therefore, to transport the SNF solely by rail, PFS proposes the construction and operation of a rail line from the existing rail line to the proposed site. The proposed rail line would be located along the western edge of Skull Valley and extend from Skunk Ridge (near Low, Utah) to the ISFSI site on the Reservation. The proposed rail line would be 32 miles long and would traverse only land managed by the U.S. Department of Interior's Bureau of Land Management (BLM).

The U.S. Nuclear Regulatory Commission (NRC), in cooperation with the U.S. Department of Interior's Bureau of Indian Affairs (BIA) and BLM and the Surface Transportation Board (STB), has published a Draft Environmental Impact Statement (DEIS) regarding the PFS proposal. To gain efficiencies, the Federal agencies have also agreed to participate jointly in Section 106 of the National Historic Preservation Act. Section 106 requires the cooperating Federal agencies to take into account the effects of the PFS project on historic properties.

In May and June of 1999 and in June 2000, a PFS contractor, P-III Associates, performed a Class III cultural resources inventory to identify historic properties in Skull Valley, Utah. In the cultural resources report, P-III noted that a Treatment Plan was prepared to mitigate the adverse effects on the Hasting Cutoff (page 33). For each site within the area of potential effect (APE), the report included eligibility recommendations for inclusion in the National Register of Historic Places and treatment recommendations for all affected sites.

During the week of October 23-27, 2000, the cooperating Federal agencies met with representatives of the consulting parties to discuss the eligibility recommendations included in

**Exhibit B.5-15**

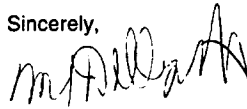
J. Parkyn

-2-

the report and potential mitigation measures for anticipated adverse impacts to the cultural resources within the APE. Based on these meetings, the cooperating Federal agencies and the consulting parties developed the enclosed list of mitigation measures which outlines agreed-upon measures that PFS would take to avoid, minimize, or mitigate these adverse effects. These mitigation measures should be incorporated into a revised Treatment Plan. In addition, all requirements of the Memorandum of Agreement should be incorporated into the Treatment Plan including a Discovery Plan. By letter dated November 7, 2000, additional analysis was requested for Site 42TO1187. Pending the outcome of this analysis, additional measures may also need to be added to the Treatment Plan. To maintain the schedule of the cooperating Federal agencies, the staff must receive a draft Treatment Plan by January 2, 2001.

Please contact Scott Flanders at (301) 415-1172 if you wish to discuss any questions you may have about this letter. Please reference TAC No. L22462 and Docket No. 72-22 in correspondence related to this request.

Sincerely,



Mark S. Delligatti, Senior Project Manager  
Spent Fuel Licensing Section  
Licensing and Inspection Directorate  
Spent Fuel Project Office  
Office of Nuclear Material Safety  
and Safeguards

Docket No. 72-22  
TAC No.: L22462

Enclosure: Proposed Mitigation Measures

cc w/enclosure: EIS Service List

**MITIGATION MEASURES DEVELOPED DURING THE CONSULTATION PROCESS  
REQUIRED FOR SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION AC,  
DOCKET NO. 72-22**

**I. Sites eligible for inclusion in the National Register of Historic Places.**

**For All Eligible Sites**

- Acquire a sequence of aerial photos through time beginning with the earliest available from the National Archives, as well as other archives if available.
- Interpret changes through time as shown on the photos (chronology, integrity of location, etc.).
- Acquire an aerial infrared photo, if available.
- Make copies of each photo for each site; file these with the site form.
- Map portion of site in and near the APE using GPS, including all features present in the area that would be destroyed; describe all such features in detail.
- Conduct a metal detector survey of APE; collect, analyze, and curate artifacts in-state.
- Use Chairperson of the Utah Historic Trails Consortium as a contact for important information to be used in implementing treatment, including past research and historical documents, which should be briefly summarized.
- Update site form. Updates should include information based on photo interpretation, copies of relevant aerial photos, GPS data, map data, descriptive data, analysis and curation data for collected artifacts, and brief summary of historical data, with a reevaluation of the applicability of each of the eligibility criteria.
- Prepare a formal report on the results of mitigation.
- Establish in the Treatment Plan which portions of compiled documentation is appropriate to release to various entities. Archive duplicates of this data with the appropriate entities.
- Provide Treatment Plan to Chairperson of the Utah Historic Trails Consortium before mitigation measures begin.
- Avoid as much of the site as possible during construction by barricading.
- Assist the Skull Valley Band of Goshutes in developing educational materials (e.g., brochures/booklet/exhibition) on the Skull Valley to be located at appropriate locations (e.g., proposed Skull Valley Band Cultural Center). Assistance could take the form of monetary funding or providing facilities for a cultural exhibit.

**Additional Measures at Each Site**

**42TO709, Emigrant Trail/Hastings Cutoff and  
42TO1417, Road to Sulphur Spring or Eight-Mile Spring**

- Archeological survey along length of Trail on all public lands from Hope Wells to Redlum Spring; record and map Trail, artifacts, features, other sites, and photo points using GPS, conduct black and white photo documentation of entire segment.
- Provide appropriate funding for developing, printing and distributing the first 5,000 copies of a brochure describing the California Trail from Salt Lake to Humboldt River to the National Park Service Long Distance Trails Office (NPS). This brochure must meet the NPS standards for inclusion in their series on the California Trail. It is to be distributed by the NPS.
- Provide appropriate funding for printing of an additional 50,000 copies of the existing NPS brochure on the entire California Trail to the NPS for distribution by the NPS.
- Establish a Kiosk for the purpose of interpreting data about the trail at an appropriate location.

**42TO1409, U.S. Route 40**

- Measures indicated above for all eligible sites should constitute adequate mitigation. Certain portions of the site should be avoided by heavy vehicles and can be avoided if an alternate access route is used.
- Pad the road surface to ensure protection from the impacts of heavy vehicle traffic, used in concert with avoidance of most of the road surface.
- Monitoring of construction access area should be conducted quarterly during rail construction, and reports on the effectiveness of protection measures should be provided to BLM to require additional protection measures if warranted.

**42TO1410, "New" Victory Highway**

- Measures indicated above for all eligible sites should constitute adequate mitigation.
- Portion of site that cannot be avoided is in very poor condition; avoid segments that can be avoided and that have better integrity.

**42TO1411, "Old" Victory Highway**

- Measures indicated above for all eligible sites should constitute adequate mitigation.
- Aerial photos are very important at this site to ascertain the correct location for this early highway.

**42TO1412, Western Union Telegraph Line**

- Measures indicated above for all eligible sites should constitute adequate mitigation.

**42TO1413, Western Pacific Railroad (Union Pacific Railroad)**

- Measures indicated above for all eligible sites should constitute adequate mitigation.

**42TO1416, Road to Deep Creek**

- Measures indicated above for all eligible sites should constitute adequate mitigation.
- Aerial photos are very important at this site to ascertain the correct location for this badly damaged wagon trail.

**II. Sites not eligible for inclusion in the National Register of Historic Places.**

**42TO1343, Buried AT&T Telephone Line**

**42TO1414, Historic Habitation/Gas Station**

**42TO1415, Gas Station**

**III. Site to be evaluated for inclusion in the National Register of Historic Places.**

**42TO1187, Rock Alignment and Cairns**



Jesse G. Petersen, President  
56 Bench Mark Village  
Tooele, UT 84074  
435-882-6581

December 14, 2000

Mark S. Delligatti  
Spent Fuel Licensing Section  
Nuclear Regulatory Commission  
Washington, DC, 20555-0001

Subject: Private Fuel Storage Project

Dear Mr. Delligatti:

This is in response to your letter of December 1, 2000 which was a request for concurrence on the latest Cultural Resources Inventory and the Draft Memorandum of Agreement.

I concur.

I would also like to note that I am most anxious to see the proposed treatment plan. I am assuming that I will get a copy when it is completed.

Incidentally, I would appreciate it if you would make a correction in my mailing address. It is 56 Bench Mark Village rather than 55.

Thank you, and best regards,

NEW YORK TO SAN FRANCISCO—RAILROAD 3181 MILES; LINCOLN HIGHWAY 3384 MILES; TELEPHONE 3370 MILES

Exhibit B.5-16

B-97

NUREG-1714



## United States Department of the Interior

NATIONAL PARK SERVICE  
CALIFORNIA, MORMON PIONEER, OREGON & PONY EXPRESS NATIONAL HISTORIC TRAILS  
Long Distance Trails Office  
924 South State Street, Suite 250  
Post Office Box 45155  
Salt Lake City, Utah 84145-0155

IN REPLY REFER TO:

December 18, 2000

Mark S. Delligatti  
Spent Fuel Licensing Section  
Licensing and Inspection Directorate  
Spent Fuel Project Office  
Office of Nuclear Material Safety and Safeguards  
Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Dear Mr. Delligatti:

We appreciate the opportunity to respond to your letter of December 1<sup>st</sup> regarding the Private Fuel Storage installation in Skull Valley and on the Goshute Reservation. Our response is on the adverse effects and the draft Memorandum of Agreement.

The determination of adverse effects on the cultural resources identified in the inventory of the project area is noted and we concur with that determination. In our November 10, 2000, response, we raised a concern about the lack of the cultural (historic) landscape and once again wish to call that to your attention. The same adverse effect noted for the archeological resources pertains to the cultural landscape.

Skull Valley holds a significant and critical landscape of the California National Historic Trail. It is part and parcel of the cultural resources and worthy of inclusion as a key element in not only the determination of eligibility, but also one that will be compromised and adversely effected by the Private Fuel Storage installation. It is a resource just as those listed sites with which we concur.

Again, the *Comprehensive Management and Use Plan, Environmental Impact Statement, California National Historic Trail*, (1999) identified, as required, "high potential sites" and "high potential segments" of the trail. One such segment identified in the management plan is that which crosses Skull Valley, and thus is in the project area. It is a section of trail not only historically significant, but meets the criteria of the National Trail System Act (1968), for "high potential segments." The cultural landscape is a key item of the criteria.

The draft Memorandum of Agreement seems appropriate in all respects except the cultural landscape. In the Stipulations section, **I. Development of Treatment Plan (for**

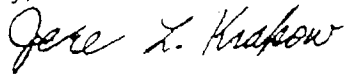
**Exhibit B.5-17**

Eligible Resources), it does not contain any language about the landscape. Several of the individual items pertain to cultural landscape just as they do to archeological resources including data recovery, field analysis, dissemination of the data, schedule of reports, and treatment of the landscape.

As developed above, and in our November 10<sup>th</sup> letter, the cultural landscape merits inclusion. It is as much a part of the cultural resources of Skull Valley as the archeological resources. We urge you to note them.

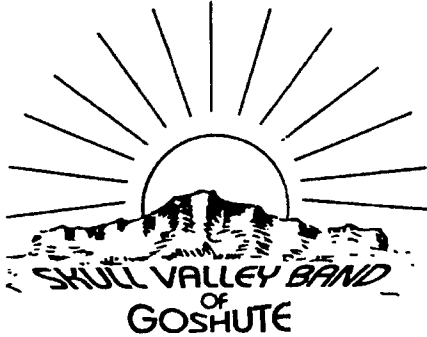
Please contact us if we can clarify our comments.

Sincerely,



Jere L. Krakow  
Superintendent

cc: Laird Naylor, Salt Lake District Office, Bureau of Land Management  
George Ivory, Chairman, Utah Historic Trails Consortium  
Utah State Historic Preservation Officer



**Skull Valley Band of Goshute Indians**  
Skull Valley Reservation  
P.O. Box 150  
Grantsville, Utah 84029  
Office: (801) 474-0535  
Fax: (801) 474-0534

Mark Delligatti  
Senior Project Manager  
Spent Fuel Licensing Section  
Licensing and Inspection Directorate  
Spent Fuel Project Office  
Office of Nuclear Material Safety  
and Safeguards

December 22, 2000

RE: Request for Concurrence on determination of adverse effects for the  
archeological and historic sites identified within the area of potential effects.

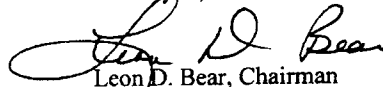
Mr. Delligatti:

With reference to your letter of December 1, 2000, we do concur with the determination of the cooperating Federal agencies with regard to their determination of adverse affects of certain historic and archeological sites.

After a careful review of the Draft Memorandum of Agreement, we have found one discrepancy. One page two of the agreement, second paragraph, please be advised that the Skull Valley Band of Goshute Indians was not organized under Section 16 of the Indian Reorganization Act of 1934. We were organized under the Treaty, Shoshoni-Goships of October 12, 1863, and ratified by executive orders in 1917 and 1918.

If you have any questions or need addition information, feel free to contact me at your convenience.

Thank you,

  
Leon D. Bear, Chairman

LDB/bbs

**Exhibit B.5-18**



## Utah Historic Trails Consortium

300 Rio Grande Salt Lake City, Utah 84101 Ph.(801) 533-3500

December 27, 2000

Member Trails Associations  
National Society,  
Daughters of Utah Pioneers  
National Society,  
Sons of Utah Pioneers  
National Pony Express Assoc.,  
Utah Division  
Oregon/California Trails Assoc.,  
Utah Chapter  
The Church of Jesus Christ  
of Latter-day Saints  
Utah Department of Conservation  
and Natural Resources  
Utah Department of Natural  
Resources  
Utah Department of Transportation  
Utah Travel Council  
Utah Division of Parks  
and Recreation  
Utah Division of State History  
Utah Division of Lands  
and Forestry  
Utah Division of Indian Affairs  
Utah Statehood Centennial  
Commission  
U.S. Department of Agriculture,  
Forest Service,  
Intermountain Region  
U.S. Department of the Interior,  
National Park Service,  
Bridges/Mountain Region  
U.S. Department of the Interior,  
Bureau of Land Management, UT  
U.S. Mountain Bicycling, Inc.  
U.S. Mountain Bicycling  
Association

Mark S. Delligatti, Senior Project Manager  
Spent Fuel Licensing Section  
Licensing and Inspection Directorate  
Spent Fuel Project Office  
Office of Nuclear Material Safety  
And Safeguards  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Dear Mr. Delligatti:

In response to your letter of December 1, 2000, and Draft Memorandum of Agreement which outlines agreed-upon measures to avoid, minimize, or mitigate adverse effects to certain historic sites in Skull Valley by the proposed spent fuel storage installation on the Skull Valley Goshute Reservation I have requested a review of your Draft Memorandum by various Member Organizations of our Utah Historic Trails Consortium but have not been able to secure a complete consensus of opinion from them at this time. Our Consortium does not hold a regular meeting in the month of December and it will not be possible to have a complete discussion of this subject until our next meeting, which is scheduled January 25, 2001.

I apologize for not being able to meet your requested 30 day response but cannot act on this matter without discussion, reaction, and concurrence from the members of our Consortium who have direct interest and involvement in the historic trails and sites in Skull Valley. You indicate in your Draft Memorandum of Agreement that failure to comment within 30 days will be presumed to represent concurrence with the Treatment Plan. If you are unable to grant us additional time to meet and discuss your plan then, as Chairman of the Utah Historic Trails Consortium, I can only indicate our rejection of the plan.

Unless I hear differently from your office, I will proceed to present this to our members at our next meeting on January 25<sup>th</sup>.

Sincerely,

George Ivory, Chairman  
Utah Historic Trails Consortium

Exhibit B.5-19

B-101

NUREG-1714



Founded 1889

A Shaw Group Company

U.S. Nuclear Regulatory Commission  
ATTN: Document Control Desk  
Washington, D.C. 20555-0001

January 25, 2001

**RESPONSE TO REQUEST FOR ADDITIONAL INFORMATION**  
**DOCKET NO. 72-22 / TAC NO. L22462**  
**PRIVATE FUEL STORAGE FACILITY**  
**PRIVATE FUEL STORAGE L.L.C.**

Reference: NRC Letter, Delligatti to Parkyn, Request for Additional Information for  
Section 106 of the National Historic Preservation Act, dated November 7,  
2000

In the above referenced letter the NRC requested additional information concerning site  
42T01187 (rock alignment and cairn) which was identified in the Private Fuel Storage  
(PFS) Class III Cultural Resource Inventory, Revision 1 dated September 2000. This  
additional information is needed by the NRC to complete the final review of the cultural  
resources in Skull Valley.

An evaluation of the site has been performed for PFS by P-III Associates, Inc. The  
results of this evaluation are presented in the Attachment 1 letter report, Alan Schroedl to  
John Donnell, dated January 24, 2001. Attachment 2 provides a map that shows the  
distances from the center of the rock alignment to the proposed rail centerline (550'),  
proposed right-of-way boundary (450'), and proposed temporary construction easement  
(400'). Additional information on the site itself (site map, site photographs, etc.) can be  
found in the aforementioned Class III Cultural Resource Inventory.

After completion of the activities suggested in the RAI, item #1 A, B.1, and B.3, PFS has  
been able to conclude that site 42T01187 is not eligible for listing on the National  
Register of Historic Places. If you have any questions regarding this response, please  
contact me at 303-741-7009.

Sincerely,

A handwritten signature in dark ink, appearing to read 'John L. Donnell'.

John L. Donnell  
Project Director  
Private Fuel Storage L.L.C.

Enclosure

Stone & Webster, Inc.  
7677 East Berry Avenue  
Englewood, Colorado 80111-2137  
Phone: 303.741.7700  
Fax: 303.741.7670 or 303.741.7671

**Exhibit B.5-20**

NRC

2

January 25, 2001

Copy to (with enclosure):

Mark Delligatti  
Scott ~~Flowers~~  
John Parkyn  
Jay Silberg  
Sherwin Turk  
Greg Zimmerman  
Scott Northard  
Denise Chancellor  
Richard E. Condit  
John Paul Kennedy  
Joro Walker  
Lisa Kirschner



## Utah Historic Trails Consortium

300 Rio Grande Salt Lake City, Utah 84101 Ph.(801) 533-3500

Mormon Trail Association  
National Society,  
Daughters of Utah Pioneers  
National Society,  
Sons of Utah Pioneers  
National Pony Express Assoc.,  
Utah Division  
Oregon/California Trails Assoc.,  
Utah Crossroads  
The Church of Jesus Christ  
of Latter-day Saints  
Utah Department of Community  
and Economic Development  
Utah Department of Natural  
Resources  
Utah Department of Transportation  
Utah Travel Council  
Utah Division of Parks  
and Recreation  
Utah Division of State History  
Utah Division of Lands  
and Forestry  
Utah Division of Indian Affairs  
Utah Sesquicentennial  
Commission  
U.S. Department of Agriculture,  
Forest Service,  
Intermountain Region  
U.S. Department of the Interior,  
National Park Service,  
Rocky Mountain Region  
U.S. Department of the Interior,  
Bureau of Land Management, UT  
U.S. Mormon Battalion, Inc.  
Auxiliary

January 31, 2001

Mark S. Delligatti, Senior Project Manager  
Spent Fuel Licensing Section  
Licensing and Inspection Directorate  
Spent Fuel Project Office  
Office of Nuclear Material Safety  
And Safeguards  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Dear Mr. Delligatti:

As I advised you in my letter of December 27, 2000, our Utah Historic Trails Consortium met on January 25, 2001 and discussed your Draft Memorandum of Agreement on the proposed Private Fuel Storage Facility in Skull Valley, Utah. Our members reviewed the Draft Copy and voted to authorize me to sign for our Consortium said Agreement as a Consulting Party. We wish to stipulate, however, that our signing this document is approval only of the Cultural Resources Inventory Study and associated mitigation proposals and in no way should be construed as approval of the Private Fuel Storage Project itself.

We also wish to raise some additional questions concerning the proposed Rail Line which will run down the West side of Skull Valley. At present the view across the valley is little changed from the time wagons made their way along the Hastings Cutoff Trail and building a Rail Line will certainly damage the pristine value of that view. Our other concern relates to the actual route of the line in the vicinity of the pristine trail and we ask that members of our Consortium be involved on-site when a survey is completed which will determine the actual location of the Railroad where it crosses Hastings Cutoff. We would appreciate your including these two concerns in any future drafts of your Memorandum of Agreement.

Sincerely,

George Ivory, Chairman  
Utah Historic Trails Consortium

Exhibit B.5-21

-9-

UTAH STATE HISTORIC PRESERVATION OFFICER

By: \_\_\_\_\_  
Date: \_\_\_\_\_

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: \_\_\_\_\_  
Date: \_\_\_\_\_

INVITED CONSULTING PARTIES:

CONFEDERATED TRIBES OF THE GOSHUTE RESERVATION

By: \_\_\_\_\_  
Date: \_\_\_\_\_

TRIBAL COUNCIL OF THE TE-MOAK WESTERN SHOSHONE INDIANS OF  
NEVADA

By: \_\_\_\_\_  
Date: \_\_\_\_\_

PAIUTE INDIAN TRIBE OF UTAH

By: \_\_\_\_\_  
Date: \_\_\_\_\_

UTAH HISTORIC TRAILS CONSORTIUM

By: George Deary  
Date: January 31, 2001

OHNGO GAUDADEH DEVIA

By: \_\_\_\_\_  
Date: \_\_\_\_\_



UNITED STATES  
**NUCLEAR REGULATORY COMMISSION**  
WASHINGTON, D.C. 20555-0001

February 8, 2001

Mr. Jere Krakow, Superintendent  
National Park Service  
Long Distance Trails Office  
324 South State Street, Suite 250  
P.O. Box 45155  
Salt Lake City, UT 84145-0155

SUBJECT: EXTENSION OF TIME TO REVIEW THE DETERMINATION OF ADVERSE EFFECTS FOR THE ARCHEOLOGICAL AND HISTORIC SITES IDENTIFIED WITHIN THE AREA OF POTENTIAL EFFECTS AND DRAFT MEMORANDUM OF AGREEMENT FOR THE PROPOSED PRIVATE FUEL STORAGE FACILITY

Dear Mr. Krakow:

By letter dated December 1, 2000, the U.S. Nuclear Regulatory Commission (NRC), in cooperation with the U.S. Department of Interior's Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), and the Surface Transportation Board (STB), requested your concurrence on the determination of adverse effects on properties that are eligible for inclusion in the National Register of Historic Places. As a consequence of the finding of adverse effect, a draft Memorandum of Agreement (Agreement) was developed that outlines agreed-upon measures that Private Fuel Storage, L.L.C. will take to avoid, minimize, or mitigate these adverse effects. The cooperating Federal agencies requested your concurrence on the determination of adverse effects and comments regarding the draft Agreement within 30 days.

The Confederated Tribes of Goshute Reservation, the Utah Chapter of the Lincoln Highway Association, and the Skull Valley Band of Goshute Indians have responded to the request. The member organizations of the Utah Historic Trails Consortium and the Advisory Council on Historic Preservation requested additional time to review the document. No response was received from the other consulting parties. Based on these requests, the cooperating Federal agencies have revised the response date to February 28, 2001.

If you have any questions, please contact Scott Flanders (NRC) at (301) 415-1172, Laird Naylor (BLM) at (801) 977-4357, Garry Cantley (BIA) at (602) 379-6750, or Phillis Johnson-Ball (STB) at (202) 565-1530.

Sincerely,  
**/RA/ original signed by /s/**  
Mark S. Delligatti, Senior Project Manager  
Licensing Section  
Licensing and Inspection Directorate  
Spent Fuel Project Office  
Office of Nuclear Material Safety  
and Safeguards

Docket No. 72-22  
cc: PFS Service Lists  
Natalie Gochnour, Utah State Planning Coordinator

**Exhibit B.5-22**

## Advisory Council On Historic Preservation

The Old Post Office Building  
1100 Pennsylvania Avenue, NW, #809  
Washington, DC 20004

Reply to: 12136 West Bayaud Avenue, #330  
Lakewood, Colorado 80226

February 15, 2001

Mark S. Delligatti  
Senior Project Manager  
Spent Fuel Licensing Section  
Office of Nuclear Material Safety and Safeguards  
Nuclear Regulatory Commission  
Washington D.C. 20555-0001

RE: *Draft Memorandum of Agreement (MOA) for the Private Fuel Storage, Limited Liability Company (PFS) Proposed Spent Fuel Storage Installation (ISFSI) on the Reservation of the Skull Valley Band of Goshute Indians.*

Dear Mr. Delligatti:

On December 5, 2000, we received your letter transmitting the draft Memorandum of Agreement (MOA) for the above referenced undertaking. We have reviewed this draft, and follow up documentation that was provided us by Melanie Wong of your staff. We offer the following comments for your consideration in finalizing the MOA:

1. The agreement must designate a single lead federal agency, which will be ultimately responsible for ensuring that the terms of the agreement are carried out. As the Nuclear Regulatory Commission appears to be coordinating Section 106 review for the four participating Federal agencies, we recommend that NRC be designated as lead, for purposes of Section 106. A WHEREAS clause should briefly explain that the cooperating Federal agencies have agreed that NRC shall serve as the lead federal agency for purposes of compliance with Section 106 of the National Historic Preservation Act. Also, other sections of the MOA should be revised to replace the phrase "*the cooperating Federal agencies*" with the NRC. If the parties desire, tasks described in the stipulations section of the agreement may be assigned to another signatory agency (such as the Bureau of Land Management) where appropriate.
2. The 2<sup>nd</sup> WHEREAS clause references figures in the cultural resources inventory report in defining the area of potential effects (APE). The referenced figures are at a very small scale, and therefore should be supplemented with a verbal description (e.g., right-of-way width along the low transportation corridor, legal descriptions and dimensions of other areas investigated), perhaps in an attachment to the agreement. Also, the APE definition should accurately reflect any modifications made since completion of the inventory report.

Exhibit B.5-23

3. Please revise the 2nd WHEREAS clause on page 2 to read: *"WHEREAS, the proposed private fuel storage facility is located on reservation lands of the Skull Valley Band of the Goshute Indians (Skull Valley Band), and NRC has consulted with the Skull Valley Band, a federally recognized Indian tribe, organized under Section 16 of the Indian Reorganization Act of 1934, which..."*
4. Fourth WHEREAS on page 2: A better reference for consultation with tribes is 36 CFR 800.3(f)(2).
5. Fifth WHEREAS clause on page 2: the correct reference for consultation with applicants is 36 CFR 800.2(c)(4).
6. The 7<sup>th</sup> and 8<sup>th</sup> WHEREAS clauses on page 2, regarding the class III inventory and consultation regarding adverse effects are unnecessary. We recommend deleting them.
7. The opening statement after the title "Stipulations" should state: *"The NRC shall ensure that the following measures are carried out."*
8. Stipulation I, and the rest of the agreement, should use terms that are defined in the regulations wherever possible. In the title of Stipulation I, use "Historic Properties" instead of "eligible resources." We also recommend that Stipulation I.a. open with the following statement, to clarify who is responsible for developing the plan: *"[Identify either NRC or PFS] shall develop a treatment plan for the treatment of effects of the undertaking on the historic properties identified in Enclosure 1 of this agreement."*
9. Also, in Stipulation I.a, the first sentence should be revised to read: *"The Treatment Plan will identify (1) all National Register eligible properties in the APE, (2) the nature of the effects..."* and the reference to the Council's publication, "Treatment of Archaeological Properties" should be changed to our more current guidance on archaeological data recovery: *"The Council's Recommended Approach for Consultation on Recovery of Significant Information From Archaeological Sites (Federal Register Vol. 64, No. 95, May 18, 1999)."* We also recommend that this stipulation state that NRC (or PFS) shall use as a basis for the Treatment Plan the proposed mitigation measures from the letter dated December 12, 2000, from NRC to Private Fuel Storage. Rather than referencing the letter in the MOA, it would be best to include the three page outline of mitigation measures as an enclosure to the MOA.
9. As we understand it, archaeological data recovery is not currently proposed as mitigation for any historic properties in the APE. Stipulation I.B. may therefore not be necessary. However, if you wish to retain this in case archaeological data recovery should become necessary, the opening sentence of Stipulation I.B., should be revised to read: *"Where archaeological data recovery is recommended for the treatment of historic properties, the Treatment Plan shall specify..."*
10. Stipulation I.d.: We recommend the following rewording: *"If any signatory or concurring party requests revisions to the Treatment Plan, NRC shall attempt to address the request and*

*provide the parties to this Agreement 20 days from receipt to review and comment on the proposed revisions. Any timely objections to the Treatment Plan or the revised Treatment Plan shall be resolved in accordance with Stipulation VII."*

11. Stipulation I.e: please reword this stipulation to identify who is responsible for preparing the report and submitting it to the other parties for review.

12. The measures for addressing discoveries, Stipulation IV, should be consistent with the Cultural Resource Conditions contained in the Draft EIS (page 9-11 to 9-12). The proposed consultation with "the cooperating Federal agencies" in this draft MOA might prove too cumbersome for the short turn around needed to address discoveries that occur during project construction. The more specific consultation with BLM or BIA, which is included in the draft EIS appears more manageable.

13. Stipulation VII, Dispute Resolution: please strike the word "*signatory*" from the first sentence. Concurring parties should have the same right to invoke the dispute resolution clause as the signatory parties.

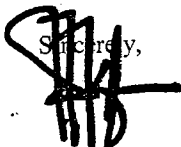
14. VIII, Effective Date: This stipulation is somewhat unclear regarding when the agreement goes into effect. It should state that the agreement shall become effective when executed by the NRC, BIA, BLM, STB, Skull Valley Band of the Goshute Indians, and the Council.

15. Stipulation X, Termination: please delete the sentence reading "*This agreement will remain in effect until construction of the rail line and PFS facility ceases.*" The agreement should remain in effect until all of the its provisions have been carried out. Rather than stating that the agreement will terminate upon completion of construction, we recommend including a date, after which the signatories will consult to determine whether the agreement should be amended, terminated, or remain in force, as described in the closing sentence.

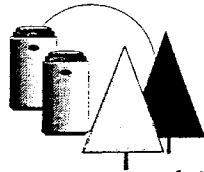
16. Headings for the signature pages should read: "Signatory Parties," and "Concurring Parties."

Thank you for providing us an opportunity to review the draft MOA for this undertaking. If you have any questions or concerns regarding these recommendations, please contact Carol Gleichman of our staff at (303) 969-5110.

Sincerely,



Don L. Klima  
Director  
Office of Planning and Review



*Private Fuel Storage, L.L.C.*

---

7677 East Berry Ave., Englewood, CO 80111-2137  
Phone 303-741-7009 Fax: 303-741-7806  
John L. Donnell, P.E., Project Director

U.S. Nuclear Regulatory Commission  
ATTN: Document Control Desk  
Washington, D.C. 20555-0001

February 28, 2001

**DRAFT MEMORANDUM OF AGREEMENT REGARDING PROTECTION OF  
CULTURAL RESOURCES DURING PFSF CONSTRUCTION AND OPERATION  
DOCKET NO. 72-22 / TAC NO. L22462  
PRIVATE FUEL STORAGE FACILITY  
PRIVATE FUEL STORAGE L.L.C.**

Reference: U.S. NRC Letter, Delligatti to Parkyn, "Request for Concurrence on Determination of Adverse Effects for the Archeological and Historic Sites Identified Within the Area of Potential Effects and Draft Memorandum of Agreement for the Proposed Private Fuel Storage Facility", dated December 1, 2000

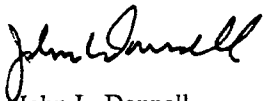
Private Fuel Storage (PFS) has completed a detailed review of the draft Memorandum of Agreement that was transmitted with the referenced letter. The purpose of this letter is to submit a revised draft Memorandum of Agreement that includes PFS comments (attached). Please note that PFS has preserved the integrity of the agencies' draft as closely as possible. The draft changes are generally intended to (1) clarify the facts outlined in the WHEREAS clauses (based on PFS's understanding of the facts to date); (2) establish consistency between the Treatment Plan provisions and the agreed upon mitigation measures; (3) clarify the specific time periods associated with dispute resolution; and (4) identify the status of the signatory and concurring parties consistent with the pertinent laws and implementing regulations. For clarity, PFS has not attempted to identify ("redline") all its revisions in the attachment but can provide a redline upon agency request.

PFS appreciates consideration of our comments and would like to review any supplemental comments received by any party or entity. After agency review, PFS would welcome an opportunity for follow-up in a conference call to discuss specific issues.

**Exhibit B.5-24**

If you have any questions regarding this response, please contact me at 303-741-7009.

Sincerely,



John L. Donnell  
Project Director  
Private Fuel Storage L.L.C.

Attachment

Copy to (with enclosure):

Mark Delligatti  
Scott Flanders  
John Parkyn  
Jay Silberg  
Sherwin Turk  
Greg Zimmerman  
Scott Northard  
Denise Chancellor  
Richard E. Condit  
John Paul Kennedy  
Joro Walker

**COPY**

**STONE & WEBSTER ENGINEERING CORPORATION**

JLDonnell-1/1

JLCooper-1/1

JRJohns-1/1

DWLewis-1/0

CFile R2.1.6

Jb Bk M1.1

S03389.doc

**DRAFT**  
**MEMORANDUM OF AGREEMENT**  
**among the**  
**U.S. NUCLEAR REGULATORY COMMISSION,**  
**U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS,**  
**WESTERN REGIONAL OFFICE,**  
**U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT,**  
**SALT LAKE FIELD OFFICE,**  
**U.S. SURFACE TRANSPORTATION BOARD,**  
**SKULL VALLEY BAND OF GOSHUTE INDIANS,**  
**ADVISORY COUNCIL ON HISTORIC PRESERVATION**  
**and**  
**PRIVATE FUEL STORAGE, L.L.C.**  
**regarding the**  
**CONSTRUCTION AND OPERATION OF AN INDEPENDENT**  
**SPENT FUEL STORAGE INSTALLATION ON THE RESERVATION**  
**OF THE SKULL VALLEY BAND OF GOSHUTE INDIANS AND THE**  
**RELATED TRANSPORTATION FACILITY IN TOOELE COUNTY, UTAH**

WHEREAS, the cooperating Federal agencies, the U.S. Nuclear Regulatory Commission (NRC), U.S. Department of the Interior, Bureau of Indian Affairs (BIA), Western Regional Office, U.S. Department of the Interior, Bureau of Land Management (BLM), Salt Lake Field Office, and U.S. Surface Transportation Board (STB) propose to approve the Private Fuel Storage L.L.C. (PFS) Project (hereafter the Project), described as the preferred alternative on page 9-xx of the Final Environmental Impact Statement, dated XXXX 2001, on the Reservation of the Skull Valley Band of Goshute Indians in Tooele County, Utah; and

WHEREAS, the cooperating Federal agencies in consultation with the Utah State Historic Preservation Officer (SHPO) have established the Project's Area of Potential Effects (APE), as defined at 36 CFR 800.16(d), as shown in Figures 1-2 of the Class III Cultural Resource Inventory of the Private Fuel Storage Project Area in Skull Valley, Tooele County, Utah, (hereafter the Report); and

WHEREAS, the cooperating Federal agencies have consulted with the SHPO on (1) determinations regarding eligible properties and (2) potential adverse effects on historic properties within the APE; eight of these properties have been determined to be eligible for inclusion on the National Register of Historic Places through application of the criteria at 36 CFR 60.4; a list of these properties and their eligibility and effect determinations are presented in Enclosure 1; and,

WHEREAS, the cooperating Federal agencies have consulted with the Advisory Council on Historic Preservation (hereafter the Council) pursuant to Section 800.2 of the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act (the Act) on the determination regarding the adverse effect of the Project on properties eligible for inclusion on the National Register of Historic Places and to resolve any potential adverse effects of the Project on historic properties; and

WHEREAS, the cooperating Federal agencies have contacted the SHPO and invited the SHPO to consult on this Memorandum of Agreement (Agreement); and

WHEREAS, the SHPO has not provided substantive response on the Agreement such that the cooperating Federal agencies determined that further consultation would not be productive and accordingly requested that the Council comment on the Agreement; and

WHEREAS, the cooperating Federal agencies have consulted with the Skull Valley Band of Goshute Indians (Skull Valley Band), a Federally recognized Indian Tribe, pursuant to the Treaty, Shoshoni-Goships of October 12, 1863, ratified by Executive Orders in 1917 and 1918, which exercises general governmental jurisdiction over all lands of the Reservation of the Skull Valley Band, and for purposes of this consultation is an Indian tribe as described at 36 CFR 800.3(d), regarding this Agreement; and

WHEREAS, no provision of this Agreement will be construed by any of the signatory or concurring parties as abridging or debilitating any sovereign powers of the Skull Valley Band; affecting the trustee-trustor relationship between the Secretary of the Interior and the Skull Valley Band; or interfering with the government-to-government relationship between the United States and the Skull Valley Band; and

WHEREAS pursuant to 36 CFR 800.2, the cooperating Federal agencies have consulted with The Confederated Tribes of the Goshute Reservation, The Tribal Council of the Te-Moak Western Shoshone Indians of Nevada, Paiute Indian Tribe of Utah, Ohngo Gaudadeh Devia, and Utah Historic Trail Consortium and invited them to concur in this Agreement; and

WHEREAS this consultation has been coordinated to address other statutory and legal obligations including the American Indian Religious Freedom Act, the Native American Graves and Repatriation Act, Executive Order 13007, and the Archaeological Resources Protection Act; and

WHEREAS, pursuant to 36 CFR 800.2(c)(4), the cooperating Federal agencies have consulted with PFS, the applicant for the Project; and

WHEREAS, the cooperating Federal agencies, as part of the National Environmental Policy Act (NEPA) review process, have sought public comments and notified the public of the potential effects of the Project on historic properties as required in 36 CFR Part 800 and have considered the applicable requirements of Section 106 of the Act in the course of consultation; and

WHEREAS, the cooperating Federal agencies have consulted with the signatory parties, the concurring parties and others on (1) determinations regarding eligible properties and (2) potential adverse effects on historic properties within the APE; eight of these properties have been determined to be eligible for inclusion on the National Register of Historic Places through application of the criteria at 36 CFR 60.4 and as presented in Enclosure 1; and,

WHEREAS, a Class III Inventory, the purpose of which is the identification of prehistoric sites, historic sites and structures, and cultural landscapes that may be affected by the Project, has been conducted, and a report on the results of the Class III Inventory (the Report)

has been provided to the cooperating Federal agencies, the SHPO, the other signatory and the concurring parties through submission to them in September and October 2000; and

WHEREAS, the cooperating Federal agencies, in consultation with the other signatory and concurring parties to this Agreement agree to avoid, minimize, or mitigate any adverse effects to historic properties; and the signatory and concurring parties have already agreed to mitigation measures that will be incorporated into a Treatment Plan to be approved by the signatory parties to mitigate any adverse effects to historic properties.

NOW, THEREFORE, the signatory parties agree that if approved, the Project shall be implemented in accordance with the following stipulations in order to take into account the effects of the Project on historic properties and that these stipulations shall govern the Project and all of its parts until the Agreement expires or is terminated.

#### **STIPULATIONS**

The cooperating Federal agencies agree that the following measures are to be carried out:

##### **I. Development of Treatment Plan (for Eligible Resources)**

a. PFS shall submit a Treatment Plan to the NRC. The Treatment Plan will identify (1) all eligible historic properties in the APE or segment thereof, (2) the nature of the effects to which each property will be subjected, and (3) the mitigation measures agreed to by the consulting and concurring parties as evidenced by NRC letter dated December 12, 2000 to Mr. John Parkyn, Chairman of the Board, PFS, to avoid, minimize, or mitigate the effects of the Project. The Treatment Plan will be submitted by the NRC to the other signatory and concurring parties for 30 day review. The Treatment Plan will be consistent with the Secretary of the Interior's "Standards and Guidelines for Archaeological Documentation" (48 FR 44734-37) and will take into account the Council's publication, "Treatment of Archaeological Properties" (1980). Unless any signatory party objects to the Treatment Plan within 30 calendar days after receipt of the plan, NRC shall ensure that it is implemented and construction shall be authorized to proceed in accordance with Stipulation II.

b. Should a signatory party object to the Treatment Plan within 30 calendar days of receipt, the issue shall be resolved in accordance with this Agreement's dispute resolution provision, Stipulation VI.

##### **c. Failure to Comment on Treatment Plan**

Failure to comment within 30 calendar days after receipt of the Treatment Plan will be presumed to represent concurrence with the Treatment Plan, except that the Treatment Plan may not be implemented before the BLM has issued an Archaeological Resources Protection Act (ARPA) permit authorizing the investigations required by the Treatment Plan.

d. Revisions to the Treatment Plan

If any signatory party requests revisions to the Treatment Plan, NRC shall provide the signatory parties to this Agreement 20 calendar days from receipt to review and comment upon the proposed revisions.

e. Treatment Plan Report Preparation and Review

Within 180 calendar days of completion of field work pursuant to the Treatment Plan, a report will be prepared incorporating all appropriate data analysis and interpretations. The report will be submitted to signatory and concurring parties; the signatory parties will be provided 30 calendar days to review and comment upon the report. Failure to comment within 30 calendar days after receipt of the report will be presumed to represent concurrence with the report.

**II. Construction**

a. Upon issuance of the authorizations requested from the cooperating Federal agencies, the cooperating Federal agencies will allow PFS to begin construction in those portions of the APE that have been subjected to the Class III Inventory and that are not within 200 feet of eligible historic properties.

b. Where eligible properties are present, PFS will notify the cooperating Federal agencies when treatment is completed for an area. Within 45 calendar days of notification, NRC will determine whether treatment has been satisfactorily completed and will notify PFS of its determination. If NRC does not notify PFS within the 45 calendar day time period, PFS may presume concurrence of NRC and the cooperating Federal agencies and proceed with construction in that area.

**III. Discovery**

a. A Discovery Plan for previously unencountered sites will be incorporated into the Treatment Plan. If a previously undiscovered archaeological, historical, or cultural property is encountered during construction or previously known properties will be affected in an unanticipated manner, all work will cease within 200 feet in all directions of the property until the cooperating Federal agencies can evaluate and, if necessary, authorize steps to mitigate impacts to the property. Evaluation and mitigation will be carried out in consultation with the signatory parties to this Agreement as expeditiously as possible in accordance with 36 CFR 800.13(b).

b. If cultural properties are encountered on Federal lands, the agency controlling the land will be consulted to develop appropriate mitigation measures. PFS will provide the construction contractor with written notification of the proper protocol for reporting discovery of previously unencountered sites.

**IV. Changes in the Area of Potential Effects**

a. If a change in the APE is determined to be necessary as a result of a substantial change in the Project design, the cooperating Federal agencies will initiate review, evaluation,

and determination of effects in consultation with signatory and concurring parties and ensure that any such change is inventoried or treated in a manner consistent with this Agreement.

b. Where no historic property is present or will be affected, the cooperating Federal agencies shall consult with and submit documentation to the signatory and concurring parties. If all cooperating Federal agencies agree to the adequacy of documentation and no adverse comment from signatory parties other than the cooperating Federal agencies is received within 15 calendar days of receipt, the cooperating Federal agencies may assume concurrence.

c. Where an historic property will be affected and is the same property type as addressed in the Treatment Plan, PFS shall consult with and submit documentation to the signatory and concurring parties to determine applicability of the existing plan. If all cooperating Federal agencies agree to the adequacy of documentation and the determination and no adverse comment from signatory parties other than the cooperating Federal agencies is received within 15 calendar days of receipt, the cooperating Federal agencies may assume concurrence.

d. Where an historic property will be affected but is not the same property type as addressed by the Treatment Plan, PFS shall submit the Supplemental Treatment Plan to the signatory and concurring parties for review. If all cooperating Federal agencies agree to the adequacy of the Supplemental Treatment Plan and no adverse comment from signatory parties other than the cooperating Federal Agencies is received within 30 calendar days of receipt, the cooperating Federal agencies may assume concurrence. Once finalized, the Supplemental Treatment Plan will be submitted to the Council for its information.

e. Should a signatory party object to a determination regarding applicability of the existing plan or a Supplemental Treatment Plan, NRC shall forward all documentation relative to the dispute to the Council and the issues shall be resolved in accordance with this Agreement's dispute resolution provision, Stipulation VI.

#### **V. Confidentiality**

a. The cooperating Federal agencies shall ensure that all sensitive material, as defined in Section 9 of the ARPA and Section 304 of the Act, is managed in such a way that historic properties, traditional cultural values, and sacred objects are not compromised, to the fullest extent available under law.

b. Each signatory and concurring party to this Agreement shall safeguard information about the nature and location of archaeological, historic, and traditional cultural properties and not reveal that information to any additional party, pursuant to Section 304 of the Act and Section 9 of the ARPA, without the express written permission of the cooperating Federal agencies.

#### **VI. Dispute Resolution**

a. Should any signatory party to this Agreement object to any actions pursuant to this Agreement within 30 calendar days of initiation of that action, the cooperating Federal agencies shall consult with the objecting party to resolve the objection. The objection must be

identified specifically and the reasons for the objection documented. If the cooperating Federal agencies determine that an objection cannot be resolved, the NRC shall forward all documentation relevant to the dispute to the Council in accordance with 36 CFR 800.2(b)(2).

b. The Council will, within 45 calendar days of receipt of all pertinent documentation, provide the cooperating Federal agencies with a recommendation or comments related to the dispute. (Any comments provided by the Council and all comments from the parties to this Agreement will be taken into account by the cooperating Federal agencies in accordance with 36 CFR 800.7(c)(4) in reaching a final decision regarding the dispute).

c. Failure of the Council to provide a recommendation or comments pursuant to such a request shall indicate that the Council has waived its right to comment so that NRC can proceed with a determination regarding the dispute.

d. NRC shall make a determination regarding a dispute within 15 calendar days of receipt of Council recommendation, comments or the Council's waiver of its right to comment. The NRC will notify all parties of its decision in writing before implementing that portion of the Project subject to dispute under this stipulation. The NRC's decision will be final.

e. The cooperating Federal agencies' responsibilities to carry out all actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.

f. Any recommendation or comments provided by the Council will be understood to pertain only to the subject of the dispute; and no additional work shall occur within 200 feet of the area of the dispute until resolution of said dispute. The cooperating Federal agencies' responsibility to carry out all actions under this Agreement that are not the subject of the dispute will remain unchanged.

## **VII. Effective Date**

This Agreement shall become effective when executed by the authorized representatives of each party. This Agreement will become effective on the date that the cooperating Federal agencies receive the last signature from a signatory party. The cooperating Federal agencies shall ensure that each signatory and concurring party is provided with a copy of the fully executed Agreement.

## **VIII. Amendments**

If any signatory of this Agreement determines that its terms will not or cannot be carried out or that an amendment to its terms is needed, that party shall immediately notify the cooperating Federal agencies and request an amendment. The signatory parties to this Agreement will expeditiously consult to consider such amendment in accordance with 36 CFR 800. 3(g).

## **IX. Termination**

Any signatory party to this Agreement may terminate it by providing 30 calendar days notice, in writing, to the other parties, provided that the signatory parties will consult during the

period prior to termination to seek agreement or amendments or other action that would avoid termination. In the event of a termination, the cooperating Federal agencies will comply with 36 CFR Part 800.4 through 800.7 to execute a new Agreement.

**X. Term of Agreement**

This Agreement will remain in effect until construction of the rail line and PFS facility ceases. Prior to that date, the signatories must consult if there are issues that require amendment or termination; otherwise the Agreement will automatically terminate after construction ceases unless it is amended or the expiration date extended by written agreement of the signatory parties.

**XI. Failure to Carry Out Terms**

Failure on the part of the cooperating Federal agencies to carry out the terms of this Agreement requires that the cooperating Federal agencies again request the Council's comments. If the cooperating Federal agencies cannot carry out the terms of this Agreement, they shall not sanction any action or make any irreversible commitment that would foreclose the Council's consideration of alternatives to avoid or mitigate adverse effects, until such time as the commenting process has been completed. Failure on the part of PFS to carry out the terms of this Agreement requires that PFS notify the cooperating Federal agencies. If PFS cannot carry out the terms of this Agreement, it shall not take any action that would result in any irreversible commitment that would foreclose the cooperating Federal agencies' consideration of alternatives to avoid or mitigate adverse effects.

**XII. Execution of this Agreement**

Execution and implementation of this Agreement evidences that the cooperating Federal agencies have afforded the Council a reasonable opportunity to comment on the Project and its effects on historic properties and that the cooperating Federal agencies have taken into account the effects of the Project on historic properties.

**SIGNATORY CONSULTING PARTIES:**

**U.S. NUCLEAR REGULATORY COMMISSION**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT**

By: \_\_\_\_\_  
Date: \_\_\_\_\_

**U.S. SURFACE TRANSPORTATION BOARD**

By: \_\_\_\_\_  
Date: \_\_\_\_\_

**SKULL VALLEY BAND OF GOSHUTES**

By: \_\_\_\_\_  
Date: \_\_\_\_\_

**PRIVATE FUEL STORAGE, L.L.C.**

By: \_\_\_\_\_  
Date: \_\_\_\_\_

**ADVISORY COUNCIL ON HISTORIC PRESERVATION**

By: \_\_\_\_\_  
Date: \_\_\_\_\_

**INVITED CONCURRING PARTIES:**

**CONFEDERATED TRIBES OF THE GOSHUTE RESERVATION**

By: \_\_\_\_\_  
Date: \_\_\_\_\_

**TRIBAL COUNCIL OF THE TE-MOAK WESTERN SHOSHONE INDIANS OF  
NEVADA**

**By:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

**PAIUTE INDIAN TRIBE OF UTAH**

**By:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

**UTAH HISTORIC TRAILS CONSORTIUM**

**By:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

**OHNGO GAUDADEH DEVIA**

**By:** \_\_\_\_\_  
**Date:** \_\_\_\_\_



**UNITED STATES  
NUCLEAR REGULATORY COMMISSION**  
WASHINGTON, D.C. 20555-0001

March 19, 2001

Ms. Natalie Gochmour  
Utah State Planning Coordinator  
Room 116 State Capitol  
Salt Lake City, UT 84114

**SUBJECT: REQUEST FOR CONCURRENCE ON ELIGIBILITY DETERMINATION FOR  
THE ROCK ALIGNMENT AND CAIRN IDENTIFIED FOR THE PROPOSED  
PRIVATE FUEL STORAGE FACILITY**

Dear Ms. Gochmour:

In May and June of 1999 and in June 2000, a Private Fuel Storage, L.L.C. (PFS) contractor, P-III Associates, Inc., performed a Class III cultural resources inventory to identify historic properties in Skull Valley, Utah. PFS submitted this information to the U.S. Nuclear Regulatory Commission (NRC) staff in October 2000. For each site within the Area of Potential Effects, the report included eligibility recommendations for inclusion in the National Register of Historic Places (*National Register*). One site, 42TO1187, (rock alignment and cairn) was not evaluated for eligibility. By letter dated November 7, 2000, the NRC staff, in cooperation with the U.S. Department of Interior's Bureau of Indian Affairs (BIA) and Bureau of Land Management (BLM), and the Surface Transportation Board (STB) requested additional information about site 42TO1187, which is needed by the NRC staff and the cooperating agencies to complete the final review of the cultural resources in Skull Valley.

By letter dated January 25, 2001, PFS responded to the request for additional information. Attached to the letter was the result of an evaluation of the site performed by P-III Associates, Inc., and a map showing distances between the rock alignment and proposed rail centerline, right-of-way boundary, and construction easement boundary. PFS has concluded that site 42TO1187 is not eligible for listing on the *National Register*. Furthermore, PFS has realigned the rail line to avoid any direct or indirect effect on this site. The evaluation performed by P-III Associates is attached to this letter for your review.

The NRC staff and the cooperating agencies have reviewed the attached report and concur with the eligibility recommendation for site 42TO1187. The NRC staff and the cooperating agencies request your concurrence, within 30 days, on the eligibility recommendation in the report. If you do not respond within 30 days, we will assume you concur with the eligibility determination.

**Exhibit B.5-25**

N. Gochnour

- 2 -

If you have any questions, please contact Scott Flanders (NRC) at (301) 415-1172, Laird Naylor (BLM) at (801) 977-4357, Garry Cantley (BIA) at (602) 379-6750, or Phillis Johnson-Ball (STB) at (202) 565-1530.

Sincerely,



Mark S. Delligatti, Senior Project Manager  
Licensing Section  
Licensing and Inspection Directorate  
Spent Fuel Project Office  
Office of Nuclear Material Safety  
and Safeguards

Docket No. 72-22

Enclosure: 01/25/01 ltr from PFS

cc: PFS Service Lists

**Advisory  
Council On  
Historic  
Preservation**

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The Old Post Office Building  
1100 Pennsylvania Avenue, NW, #809  
Washington, DC 20004

Reply to: 12136 West Bayaud Avenue, #330  
Lakewood, Colorado 80226

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April 20, 2001

Mark S. Delligatti  
Senior Project Manager  
Spent Fuel Licensing Section  
Office of Nuclear Material Safety and Safeguards  
Nuclear Regulatory Commission  
Washington D.C. 20555-0001

RE: *Draft Treatment Plan for Mitigation Measures and Discovery Plan for the Private Fuel Storage, Limited Liability Company (PFS) Proposed Spent Fuel Storage Installation (ISFSI) on the Reservation of the Skull Valley Band of Goshute Indians.*

Dear Mr. Delligatti:

On March 21, 2001, we received from your office a copy of PFS's proposed treatment plan for the mitigation of effects of the proposed Spent Fuel Storage Installation (ISFSI) on historic properties. Eight National Register-eligible properties will be affected by the undertaking, all on lands administered by the Bureau of Land Management. We have reviewed this draft, and offer the following comments for your consideration.

1. Page 8 - The section on *Interim Protection During Construction* requires PFS to pad the portion of U.S. Route 40 under the railroad bridge during construction of the rail line. The treatment plan should provide additional information on how this padding will be accomplished (e.g., what material, how thick, whether engineering tests are needed to predict compaction) to ensure protection of the integrity of U.S. 40. It should allow BLM to review and approve a more specific plan for padding the site when it is completed at a later date.
2. Page 8 - The last paragraph on this page requires PFS to erect temporary fences to keep construction activities off historic properties outside of the construction corridor. The fencing should be more clearly described in this document (e.g, how high, what materials?) As suggested above, the BLM should be provided an opportunity to review and approve the fence construction plans.
3. Page 9 - Development of Educational materials for the Goshute Indians. BLM staff archaeologist, Laird Naylor, has expressed concern that this mitigation measure may not be appropriate given that no properties of traditional cultural value to the Skull Valley Band, nor any historic properties on the Skull Valley Reservation, will be affected by the undertaking. The

**Exhibit B.5-26**

Council believes that the BLM has raised a good point. The stipulation is not at all clear about what is intended for the educational exhibit, and the mitigation is not directly related to the projects effects on historic properties. However, we do not necessarily oppose including this as a mitigation measure if other parties to consultation feel there is good reason for requiring it.

4. Page 10 - Interpretive Kiosk or Wayside Exhibit for the Emigrant Trail/Hastings Cutoff: This section is unclear about who will develop the brochures and wayside exhibit. This should be specified in the Treatment Plan, and it should be a person or persons meeting professional qualifications standards.

Thank you for providing us an opportunity to review this draft Treatment Plan. If you have any questions or concerns regarding these recommendations, please contact Carol Gleichman of our staff at (303) 969-5110.

Sincerely,  


Don E. Klima  
Director  
Office of Planning and Review



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

June 19, 2001

Mr. Jere Krakow, Superintendent  
National Park Service  
Long Distance Trails Office  
324 South State Street, Suite 250  
P.O. Box 45155  
Salt Lake City, UT 84145-0155

SUBJECT: REVIEW OF MEMORANDUM OF AGREEMENT FOR THE PROPOSED  
PRIVATE FUEL STORAGE FACILITY

Dear Mr. Krakow:

By letter dated December 1, 2000, the staff of the U.S. Nuclear Regulatory Commission (NRC), in cooperation with the U.S. Department of Interior's Bureau of Indian Affairs (BIA) and Bureau of Land Management (BLM), and the Surface Transportation Board (STB), (collectively, the cooperating Federal agencies), requested your concurrence on the determination of adverse effects on properties that are eligible for inclusion in the National Register of Historic Places (*National Register*). As a consequence of the finding of adverse effect, the cooperating Federal agencies developed a draft Memorandum of Agreement (Agreement) that outlines agreed-upon measures that Private Fuel Storage, L.L.C. (PFS) will take to avoid, minimize, or mitigate these adverse effects. The cooperating Federal agencies previously requested your comments regarding the draft Agreement. Based on the comments received from the consulting parties, the Agreement was revised. Enclosed for your review is a copy of the revised Agreement (Enclosure 1). The cooperating Federal agencies request your review and comments, within 10 days, on the revised Agreement. If you do not respond within 10 days from the receipt of this letter, we will assume you have no comments on the revised Agreement. Once all comments are received, reviewed, and incorporated, as appropriate, the cooperating Federal agencies will forward a copy of the final Agreement to the consulting parties for either signature or concurrence.

As you are aware, a stipulation of the Agreement is for the development of a Treatment Plan and a Discovery Plan. The Treatment Plan will identify (1) all *National Register* eligible properties in the Area of Potential Effect, (2) the nature of the effects to which each property will be subjected, and (3) the mitigation measures agreed to by the consulting parties. The mitigation measures will be based upon the measures outlined in the NRC letter dated December 12, 2000, to Mr. John Parkyn, Chairman of the Board, PFS (Enclosure 2). The Discovery Plan will identify the process PFS must follow if a historic, archeological, or cultural property is encountered during construction or operation of the proposed PFS Facility or rail line. Once the Treatment Plan and Discovery Plan have been finalized, they will be forwarded for your review and comment.

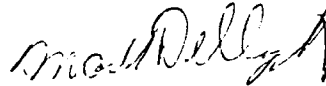
**Exhibit B.5-27**

J. Krakow

-2-

If you have any questions, please contact Scott Flanders (NRC) at (301) 415-1172, Laird Naylor (BLM) at (801) 977-4357, Garry Cantley (BIA) at (602) 379-6750, or Phillis Johnson-Ball (STB) at (202) 565-1530.

Sincerely,

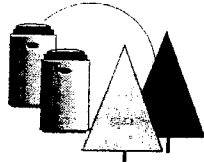


Mark S. Delligatti, Senior Project Manager  
Licensing Section  
Licensing and Inspection Directorate  
Spent Fuel Project Office  
Office of Nuclear Material Safety  
and Safeguards

Docket No. 72-22

Enclosure: 1. Revised Draft Memorandum of Agreement  
2. 12/12/00 ltr from NRC (ML003778377)

cc: PFS Service Lists



*Private Fuel Storage, L.L.C.*

---

7677 East Berry Ave., Englewood, CO 80111-2137

Phone 303-741-7009 Fax: 303-741-7806

John L. Donnell, P.E., Project Director

U.S. Nuclear Regulatory Commission  
ATTN: Document Control Desk  
Washington, D.C. 20555-0001

June 28, 2001

**REVIEW OF MEMORANDUM OF AGREEMENT  
DOCKET NO. 72-22 / TAC NO. L22462  
PRIVATE FUEL STORAGE FACILITY  
PRIVATE FUEL STORAGE L.L.C.**

Reference: U.S. NRC Letter. Delligatti to Parkyn, "Review of Memorandum of Agreement for the Proposed Private Fuel Storage Facility", dated June 19, 2001

In the referenced letter, the Nuclear Regulatory Commission (NRC) provided Private Fuel Storage, L.L.C. (PFS) with a draft Memorandum of Agreement (MOA) that outlines measures PFS will take to avoid, minimize, or mitigate the potential effects of the Private Fuel Storage Facility on properties that are deemed eligible for inclusion in the National Register of Historic Places. PFS has submitted comments on earlier iterations of the MOA and acknowledges that certain of its comments have been incorporated into the revised text. PFS has additional comments on the revised version of the MOA. Those comments are included in the attachment and are not an effort to resubmit comments already reviewed. However, PFS notes that there have been changes to the MOA that warrant consideration of the following three overarching issues.

First, the MOA now identifies BLM as the lead agency for purposes of its implementation. PFS requests that BLM identify the process whereby the MOA will be finalized and executed by all necessary parties in a timely fashion. Specifically, PFS would like to understand the time period for signatory parties to execute the MOA or in the alternative, the procedure for finalizing the MOA absent those signatures.

Second, the MOA retains language that does not reflect the ongoing efforts to comply with the cooperating federal agencies' requests. Specifically, Stipulation I. still requires that a Treatment Plan be developed. In fact, the Treatment Plan has already been drafted and was submitted to the cooperating federal agencies in March of 2001. Accordingly, references to Treatment Plan development and revisions are no longer appropriate. PFS has included revisions to Stipulation

413567.2

**Exhibit B.5-28**

U.S. NRC

2

June 28, 2001

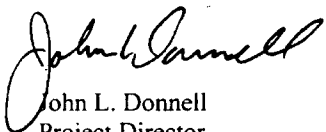
I. in the attachment that accurately reflect the current status of the Treatment Plan implementation.

Third, PFS notes that the role of the concurring parties in the MOA is, in some instances, inconsistent with the regulations implementing Section 106 of NHPA. Those regulations establish that only signatory parties can terminate, execute or amend an MOA. 36 C.F.R. § 800.6(c)(1). Accordingly, PFS maintains that the MOA ought to incorporate a consistent role for the concurring parties and has attached specific comments that include, among other things, references to the overbroad provisions in the MOA.

Thank you for the opportunity to comment on the development of the MOA. PFS would like to respond to questions or comments on the MOA and would welcome an opportunity to discuss the suggested changes and clarifications in a conference call.

If you have any questions regarding this matter, please contact me at 303-741-7009.

Sincerely,



John L. Donnell  
Project Director  
Private Fuel Storage L.L.C.

Attachment

Copy to (with enclosure):

Mark Delligatti  
Scott Flanders  
John Parkyn  
Jay Silberg  
Sherwin Turk  
Greg Zimmerman  
Scott Northard  
Denise Chancellor  
Richard E. Condit  
John Paul Kennedy  
Joro Walker

COMMENTS ON REVISED MEMORANDUM OF AGREEMENT FOR THE PROPOSED  
PRIVATE FUEL STORAGE FACILITY (June 19, 2001)

**\*\*WHEREAS Clause (Fourth) and Enclosure 1:** "the cooperating Federal agencies have determined that the Project will have adverse effects on historic properties within the APE . . . a list of these properties and their eligibility and effect determinations are presented in Enclosure 1 . . . ."

Enclosure 1 currently consists of the December 12, 2000 mitigation agreement letter and a list of sites. It does not identify the eligibility and effect determinations; as such, the enclosure ought to be substituted with the appropriate supporting documentation. Additionally, the revised enclosure and existing Enclosure 1 ought to be amended to specify that 42TO1187 is not eligible for inclusion on the National Register of Historic Places; that site has already been addressed and determined to be ineligible in detailed analysis prepared by P-III Associates, Inc., (dated January 24, 2001). Existing Enclosure 1 ought to also specify that 42TO709 is not eligible for inclusion on the National Register of Historic Places. That site is referenced as consisting of a rock cairn and alignment that require further evaluation. Presumably, 42TO709 ought to have really referenced 1187 and as noted above, that site is not eligible for listing.

**\*\*WHEREAS Clause (second to last) and Signatory/Concurring Party Page:** "the cooperating Federal agencies have consulted with the Confederated Tribes of the Goshute Reservation . . . the Paiute Indian Tribe of Utah . . ." (emphasis added).

The Paiute have been removed as a signatory or concurring party. Should the reference be stricken or the tribe added as a concurring party?

**\*\* Stipulation I.** Revise to read as follows:

I. Implementation of Treatment Plan (for Historic Properties)

PFS shall implement a Treatment Plan for the treatment of the effects of the undertaking on the historic properties identified in Enclosure 1 of this Agreement to the BLM.

a. The Treatment Plan, entitled Treatment Plan for Mitigation Measures for Eight Historic Properties and a Discovery Plan for the Private Fuel Storage Project, Skull Valley, Utah, dated March, 2001, identifies (1) all *National Register* eligible properties in the APE, (2) the nature of the effects to which each property will be subjected, and (3) the mitigation measures to avoid, minimize, or mitigate the effects of the Project agreed to by the parties. The Treatment Plan is consistent with the Secretary of the Interior's "Standards and Guidelines for Archaeological Documentation" (42 Fed. Reg. 44734-37), and takes into account the Council's publication, "The Council's Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites (*Federal Register* Vol. 64, No. 95, May 18, 1999)." The Treatment Plan incorporates the required mitigation measures from the letter dated December 12, 2000, from NRC to PFS (see Enclosure 1 of this Agreement).

b. Treatment Plan Report Preparation and Review

Within 180 calendar days of completion of field work pursuant to the Treatment Plan, PFS will submit a report to BLM incorporating all appropriate data analysis and interpretations. BLM will submit the report to signatory and concurring parties who will be provided 30 calendar days to review and comment on the report. Failure to comment 30 calendar days after receipt of the report will be presumed to represent concurrence with the report. Upon BLM concurrence that the treatment has been satisfactory completed, BLM will notify PFS and the other cooperating Federal agencies. BLM will then allow construction to proceed in and around the resource area.

**\*\*Stipulations I.e. and II.b.** Stipulations I.e. (in current draft) and II.b. both address the same issue. Stipulation II.b. is redundant. As drafted, Stipulation I.e. provides that PFS must submit a report to BLM after completing fieldwork and that BLM and other parties have 30 calendar days to comment on that report. Accordingly, Stipulation II.b. could be stricken. The reference to BLM approval of construction has been incorporated into the redline of Stipulation I.e. Alternatively, the agencies ought to incorporate the same time periods for BLM concurrence into Stipulation II.b. as are in Stipulation I.e. Specifically, Stipulation I.b. would state that *"within 30 calendar days after receipt of the Treatment Plan Report, BLM shall review the document. Failure to comment within the 30 calendar days will be presumed to represent concurrence with the report and authorization to proceed with construction in and around the resource area."*

**\*\*Stipulation III.a.** Amend the first line as follows: A Discovery Plan for previously unencountered sites *has been incorporated into* the Treatment Plan. Additionally, all references to the cessation of construction should also specify that it only applies within 200 feet of the resource. "For example, if PFS identifies any previously unrecorded artifacts or other cultural resources during construction activities on land under the jurisdiction of BLM, . . . PFS shall immediately cease construction *within 200 feet of the resource* . . . If PFS identifies any previously unrecorded or other cultural resources during construction activities on the Reservation . . . PFS shall immediately cease construction *within 200 feet of the resource* . . .

**\*\*Stipulation III.b.** Add to the sentence the following: *consistent with recovery procedures identified in the Discovery Plan.*

**\*\*Stipulation III.c.** Add the following to the beginning of the sentence: *As established in the Discovery Plan,* PFS will provide. . . .

**\*\*Stipulation VI.b.** The Council comment period is not well defined. It would appear that the Council has 45 calendar days to comment (in accordance with 800.7). It is unclear why subsection 2 is required and it should be stricken. Subsection 1 could be amended to state: Provide BLM with a *recommendation or comments in accordance with 36 CFR Part 800.7* (followed by the remainder of that subsection).

**\*\*Stipulation VI.c.** Consistent with the remainder of the revised Agreement, it would appear that the final sentence ought to state: *BLM's* (not the cooperating Federal Agencies') decision will be final.

**\*\*Stipulation VI.e.** For reasons outlined in the transmittal letter, this provision ought to be stricken. A concurring party does not have the same role and opportunity to dispute the implementation of the MOA as do the signatory parties. To provide such a role, undermines the purpose of distinguishing signatory parties who can amend an agreement from concurring parties who were afforded an opportunity to consult throughout the Section 106 process up to the development of the agreement. Alternatively, should the parties determine to include such a provision, BLM should be required to resolve the objection or make a determination regarding the objection within 15 calendar days.

**\*\*Stipulation VIII.** The second line ought to specify that signatory parties will expeditiously consult to consider the proposed amendment since only signatory parties can amend the terms of the agreement.



MICHAEL O. LEAVITT  
GOVERNOR

STATE OF UTAH  
OFFICE OF THE GOVERNOR  
SALT LAKE CITY  
84114-0601

OLENE S. WALKER  
LIEUTENANT GOVERNOR

June 29, 2001

Mark S. Delligatti, Senior Project Manager  
Licensing Section  
Licensing and Inspection Directorate  
Spent Fuel Project Office  
Office of Nuclear Material Safety and Safeguards  
U. S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Dear Mr. Delligatti,

RE: June 19, 2001, Letter From NRC Regarding Review Of Memorandum Of Agreement Concerning National Historic Preservation Act Planning Processes For The Proposed Private Fuel Storage Facility

The State of Utah has received your letter of June 19, 2001 addressed to Natalie Gochmour, State Historic Preservation Officer for this proposal. Ms Gochmour recently undertook new responsibilities within my Office, and will no longer be serving in the SHPO role, nor that of the Utah State Planning Coordinator. Until the best replacement is found, correspondence related to the historic aspects of this project should be sent to Ms. Lynne Ward, Governor's Office of Planning and Budget (same address as Ms. Gochmour).

The State is reviewing the proposed revised Memorandum of Agreement, and fully intends to provide timely comments. However, we will not be able to provide these comments within 10 days of receipt of your letter. It is important that all parties have adequate time to review the proposals. The 10-day response period proposed is too restrictive, and precludes the careful review required by law. The State will not unnecessarily delay its comments either, and will strive to have its review completed as soon as is feasible.

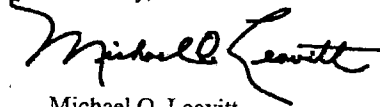
The proposed Memorandum raises serious questions about BLM planning and authority to conduct such planning, the timing and conduct of work contemplated under the Memorandum prior to the required amendments to the BLM's Resource Management

**Exhibit B.5-29**

Page 2

Plan for the area, and the adequate protection of historic properties. Further, the MOA appears seriously deficient in terms of the established role of the State Historic Preservation Officer in these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael O. Leavitt". The signature is fluid and cursive, with the first name "Michael" being more prominent and the last name "Leavitt" following in a similar style.

Michael O. Leavitt  
Governor

cc: L. Ward

MOL:DRN:dco



IN REPLY REFER TO:

## United States Department of the Interior

### NATIONAL PARK SERVICE

CALIFORNIA, MORMON PIONEER, OREGON & PONY EXPRESS NATIONAL HISTORIC TRAILS

Long Distance Trails Office  
324 South State Street, Suite 250  
Post Office Box 45155  
Salt Lake City, Utah 84145-0155

July 5, 2001

Mark S. Delligatti  
Spent Fuel Licensing Section  
Licensing and Inspection Directorate  
Office of Nuclear Material Safety and Safeguards  
Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Re: TAC No. L22462 and Docket No. 72-22

Dear Mr. Delligatti:

We appreciate the opportunity to respond to your letter dated June 19<sup>th</sup>, regarding the review of the Memorandum of Agreement for the proposed Private Fuel Storage facility in Skull Valley. Due to my travel schedules the 10-day reply date could not be met, thus this response has been delayed.

The proposed elements of the agreement seem consistent with discussions held in meetings with your staff, except for the matter of cultural (historic) landscape. Once again it is necessary to call this to your attention (see letters dated November 10, 2000, and December 18, 2000).

Notably lacking in the Memorandum of Agreement is the matter of cultural landscapes. It is a very significant resource in Skull Valley and one enumerated in the *Comprehensive Management Plan* (1999) for the California National Historic Trail, and brought out in meetings with the Nuclear regulatory Commission and in letters to you (see above).

Cultural landscape merits inclusion in the Memorandum of Understanding.

Sincerely,

Jere L. Krakow  
Superintendent

Exhibit B.5-30

Cc: Laird Naylor, Salt Lake District Office, Bureau of Land Management  
Ron Andersen, Chairman, Utah Historic Trails Consortium  
Wilson Martin, Deputy State Historic Preservation Officer  
Garry J. Cantley, Western Regional Office, Bureau of Indian Affairs

## Advisory Council On Historic Preservation

The Old Post Office Building  
1100 Pennsylvania Avenue, NW, #809  
Washington, DC 20004

Reply to: 12136 West Bayaud Avenue, #330  
Lakewood, Colorado 80226

July 6, 2001

Mark S. Delligatti  
Senior Project Manager  
Spent Fuel Licensing Section  
Office of Nuclear Material Safety and Safeguards  
Nuclear Regulatory Commission  
Washington D.C. 20555-0001

RE: *Final Draft MOA for the Private Fuel Storage, Limited Liability Company (PFS)  
Proposed Spent Fuel Storage Installation (ISFSI) on the Reservation of the Skull Valley  
Band of Goshute Indians.*

Dear Mr. Delligatti:

On June 21, 2001, we received from your office the revised draft Memorandum of Agreement (MOA) for the above referenced project. We have reviewed this draft and find that your staff has done an excellent job of incorporating our earlier comments. We offer the following additional comments for your consideration in finalizing this agreement:

1. The 4<sup>th</sup> WHEREAS is a bit misleading, as it refers to an inaccurate list of properties and their eligibility currently contained in Enclosure 1. As stated by PFS, in its comments of June 28, 2001, the letter and mitigation proposal which currently comprise Enclosure 1, do not include the most up-to-date information on site eligibility. We agree with PFS that Enclosure 1 should be substituted with an appropriate supporting document that includes an accurate list of properties, eligibility and effects determinations. We also would like to see this enclosure include the most recent draft Treatment Plan and Discovery Plan for this project.
2. Stipulation I.a. may need to be revised to accurately reflect the contents of the revised Enclosure 1.
3. The first sentence of Stipulation IX (Termination) is confusing and should be deleted.. It refers to automatic termination and an expiration date which are not otherwise provided for in the agreement. We believe that the rest of the stipulation covers the necessary consultation to try to avoid termination.

Exhibit B.5-31

Thank for providing us an opportunity to review this draft MOA. If you have any questions or concerns regarding these recommendations, please contact Carol Gleichman of our staff at (303) 969-5110.

Sincerely,

*for* 

Don L. Klima

Director

Office of Planning and Review



# State of Utah

## GOVERNOR'S OFFICE OF PLANNING AND BUDGET

Michael O. Leavitt  
Governor  
Lynne N. Ward, CPA  
Director  
Brad T. Barber  
Deputy Director

116 State Capitol Building  
Salt Lake City, Utah 84114  
(801) 538-1027  
Fax: (801) 538-1547

August 6, 2001

Mark S. Delligatti, Sr. Project Manager  
Licensing Section, Licensing & Inspection Directorate  
Spent Fuel Project Office  
Office of Nuclear Material Safety and Safeguards  
US NRC  
Washington DC 20555-0001

Dear Mr. Deligatti:

Re: State Historic Preservation Officer's Response to Proposed Memorandum of Agreement  
Concerning Historic Preservation Activities on or near the proposed Private Fuel Storage  
High Level Nuclear Waste Storage Facility in Utah

The State of Utah and the State Historic Preservation Officer have reviewed the draft Memorandum of Agreement concerning historic preservation activities on or near the proposed high level nuclear waste storage facility within the State of Utah. We have serious concerns regarding the draft MOA, and do not believe it correctly reflects the law, nor proper procedure. These defects are fundamental, and jurisdictional, to one of the proposed parties - the Bureau of Land Management - and perhaps to others. The state of Utah believes the proposed MOA is prematurely proposed, and cannot be executed at this time. Our concerns are summarized as follows:

1. The MOA requires agreement with a conclusion which, by factual timing within the regulatory process, is not true. The first paragraph ("Whereas") states that the NRC, BIA, BLM, and STB "propose to approve" the PFS project described in the preferred alternative of the Environmental Impact Statement (EIS). Although it is true that the parties "propose to approve" the proposed project, such approval is not yet given. Pending the final decision on the EIS and the final project description, it is illegal for the agencies to act to in any manner to implement a "preferred" alternative.
2. The BLM has responsibility for management of federal lands in Skull Valley, including those lands identified in the proposed rail and the proposed intermodel transfer facilities.

**Exhibit B.5-32**

However, the BLM has not yet amended the Pony Express Area Resource Management Plan (RMP) to allow for any aspect of the proposed project, including the actions proposed in this MOA. Further, the proposed MOA constitutes a planning activity by BLM, and contemplates numerous additional planning activities on the part of the BLM. Congress has prohibited the BLM from conducting any planning activities, or implementing any planning activities, or amending any RMPs until a full review and evaluation of those impacts on the Utah Test and Training Range is completed. Hence, BLM is precluded from participating in the activities contemplated by this MOA, and in executing the MOA.

3. Automatic, inflexible, presumptive triggers in the MOA would operate in violation of BLM regulation and policy. BLM is required to make reviews and affirmative decisions if a plan or action is to be authorized. A defacto approval does not meet that requirement. A trigger date for time frame, such as the + 30-day presumptive approval under 1.a-c of the stipulations, without the requirement for written response, and without opportunity to extend or modify the process or the time frame, will not comply with proper decision-making procedures and responsibilities.
4. The MOU improperly allows activities in anticipation of the construction of the rail line to proceed prior to a final decision authorizing or rejecting the PFS facility, which represents the sole destination of the rail line. Construction within the BLM right-of-way, prior to assurance that the facility will be authorized and built, constitutes unnecessary and undue degradation of federal lands and cannot be justified.
5. The entire process of planning, evaluating, and authorizing activities in anticipation of construction has failed to include or provide for participation by and regulatory authority of the Utah Department of Transportation (UDOT). State statute and rules require UDOT approval of all railroad crossings of roads. There are numerous roads which will be transected by the proposed rail line. Both the National Environmental Policy Act (NEPA) and BLM planning procedures require evaluation and consistency with State laws. This has not been accomplished.
6. The MOA purports to make statements about the effects of the proposed MOA on the government-to-government relationship among the federal agencies and the sovereign tribal entity. Although these statements may be true, the MOA does not accurately reflect United States Supreme Court law concerning the authority of the state of Utah within the boundaries of the reservation. The Supreme Court's case law authorizes state authority over non-Indians within the reservation, and for state taxation of non-tribal assets. In this regard, at a minimum, the entire MOA process does not require all relevant parties to insure that the requirements of state law concerning fees and taxes due by contractors are properly implemented.
7. The State Historic Preservation Officer further asserts that the MOA insufficiently delineates the Area of Potential Effect. The SHPO asserts that the NRC must consider the Dugway Proving Ground and the Air Force Test Range as eligible properties, as they

are vital World War II and Cold War sites which could be adversely affected by the proposed action.

8. Part X incorrectly delineates the responsibilities of the BLM, the SHPO, and the Advisory Council. The parties to the MOA have no authority to unilaterally redefine the correct relationship among these three entities. This clause would need to be rewritten at the proper time for execution of the MOA, if ever.

We appreciate the opportunity to comment, and your attention to these matters. If you have further questions, please contact me at (801) 538-1027.

Sincerely,



Lynne Ward  
Acting State Historic Preservation Officer for the  
Private Fuels Storage Proposal

copies:      US Department of Interior, BLM  
                 US Department of Interior, BIA  
                 US Surface Transportation Board  
                 Skull Valley Band of Goshutes  
                 Private Fuel Storage  
                 Advisory Council on Historic Preservation  
                 Confederated Tribes of Goshute Reservation  
                 Tribal Council of the Te-Moke Western Shoshone Indians of Nevada  
                 Utah Historic Trails Consortium  
                 Ohngo Gaudedeh Devia